

Aldermen

Mayor Lioneld Jordan
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 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda City of Fayetteville Arkansas City Council Meeting May 18, 2010

A meeting of the Fayetteville City Council will be held on May 18, 2010 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

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the May 4, 2010 City Council meeting minutes. **APPROVED**
2. **2010 Community Development Block Grant (CDBG):** A resolution amending the 2010 city budget by approving a budget adjustment to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 79-10

3. **Animal Services Donation:** A resolution amending the 2010 city budget by approving a budget adjustment to recognize animal services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 80-10

4. **Arkansas Recreational Trails Program Grant:** A resolution expressing the willingness of the City of Fayetteville, Arkansas to utilize Federal-Aid Recreational Funds.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 81-10

5. **2010 Bulletproof Vest Partnership Grant:** A resolution authorizing the Mayor to apply for a 2010 Bulletproof Vest Partnership fifty percent matching grant through the U.S. Department of Justice in the amount of \$18,200.00 for the replacement of twenty-five body armor vests for the Fayetteville Police Department.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 82-10

6. **Justice Assistance Grant (JAG):** A resolution authorizing application for a 2010-2011 Justice Assistance Grant (JAG) for federal and state funding in the amount of \$167,586.00 and \$33,517.00 respectively, for the primary funding source of the 4th Judicial District Drug Task Force.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 83-10

7. **2010 Federal Emergency Management Agency Assistance Grant:** A resolution authorizing application for a 2010 Federal Emergency Management Agency Assistance to firefighters grant in the amount of \$360,000.00 to purchase a specialized fire apparatus for the Fayetteville Fire Department.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 84-10

8. **Arkansas Power Electronics International (APEI):** A resolution certifying local government endorsement of business to participate in the tax back program{The Consolidated Incentive Act of 2003, Ark. Code Ann. §15-4-2706(D)}

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 85-10

9. **Kearney National/Cooper Power:** A resolution authorizing purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approving a contract for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field from Kearney-National, Inc. through an assignment from Cooper Power Systems, LLC, in the amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 86-10

B. Unfinished Business:

1. **Amend Chapter 72 (Nonconsensual Towing):** An ordinance to amend Chapter 72 Parking Regulations of the Fayetteville Code to enact regulations for nonconsensual towing of vehicles within the Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

THIS ORDINANCE WAS LEFT ON THE SECOND READING.

2. **Amend Chapter 72 (§72.18 Residential Parking Permit):** An ordinance to amend Chapter 72 Parking Regulations by enacting §72.18 Residential Parking Permit Program for Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

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3. **Amend Chapter 72 (Electronic Payment Station Program):** An ordinance to amend Article III Parking Meters of Chapter 72 Parking Regulations by changing its name and adding provisions for an electronic payment station program for paid parking lots and paid on-street parking and for other reasons. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

THIS ORDINANCE WAS LEFT ON THE SECOND READING.

4. **Amend Chapter 72 (§72.99 Penalties):** An ordinance to amend Article III Parking Meters and Electronic Payment Stations of Chapter 72 Parking Regulations by amending §72.99 Penalties. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

THIS ORDINANCE WAS LEFT ON THE SECOND READING.

5. **Parking Program Personnel:** A resolution approving a budget adjustment in the amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone and approving the addition of 2.5 full-time equivalent positions in the Parking Management Division for the 2010 budget. *This resolution was tabled at the May 4, 2010 City Council meeting to the June 1, 2010 City Council meeting.*

THIS ITEM WAS TABLED TO JUNE 1, 2010 CITY COUNCIL MEETING

C. New Business:

1. **Amend §72.02 Impoundment Procedures:** An ordinance to amend §72.02 Impoundment Procedures of the Code of Fayetteville to clarify when the Police may initiate a nonconsensual tow of a vehicle.

THIS ORDINANCE WAS LEFT ON THE SECOND READING.

2. **§94.09 Sale of Fireworks:** An ordinance to amend Article I General Provisions of Chapter 94 Fire Prevention of the Fayetteville City Code by repealing §94.05 Sale and Use of Fireworks and enacting a new §94.09 Sale of Fireworks.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5320

3. **Amend Chapter §163.14 Revocation or Change of Conditional Use:** An ordinance amending §163.14 of the Unified Development Code to permit a periodic review of conditional use permits as described herein.

THIS ORDINANCE WAS LEFT ON THE FIRST READING.

4. **Amend Chapter 178 Outdoor Vendors:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 178: Outdoor Vendors to allow for the sale of locally produced arts and crafts by outdoor vendors on public sidewalks and to permit consideration of larger vending carts for specific locations as a conditional use permit by the Planning Commission.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5321

5. **National Bike to Work Week:** A resolution to encourage Fayetteville citizens to participate in National Bike to Work Week and to make Fayetteville even more bicycle-friendly.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 87-10

Announcements:

1. **City Council Tour:** None

Adjournment: 10:10 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

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A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Subject:	Roll				
Alderman Rhoads arrived at 6:02 PM.	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Mayor Jordan	✓			

90

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Gray				
	Thiel				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Mayor Jordan				

Subject:	Consent				
Motion To:		Approve			
Motion By:		Thiel			
Seconded:		Cook			
<u>Minutes</u> <u>Approved</u> <u>Passed</u> 79-10 thru 86-10	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Gray				
	Thiel				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Mayor Jordan				

Subject:	Amend Chapter 72 (Nonconsensual Towing)				
Motion To:		2nd Read			
Motion By:		Lewis			
Seconded:		Cook			
B. 1 Unfinished Business <i>Left on the Second Reading</i>	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Mayor Jordan				

8-0

Subject:	Amend Chapter 72 (§72.18 Residential Parking Permit)				
Motion To:		2nd Read	Amend with Kit's language	Amend - Fuel efficient	
Motion By:		Petty	Petty	Rhoads	
Seconded:		Gray	Cook	Ferrell	
B. 2 Unfinished Business <i>Left on the Second Reading</i>	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:		Amend Chapter 72 (Electronic Payment Station Program)			
Motion To:					
Motion By:					
Seconded:					
B. 3 Unfinished Business <i>Left on</i> <i>the</i> <i>Second</i> <i>Reading</i>	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Mayor Jordan				

8-0

Subject:		Amend Chapter 72 (\$72.99 Penalties)			
Motion To:					
Motion By:					
Seconded:					
B. 4 Unfinished Business <i>Left on</i> <i>the Second</i> <i>Reading</i>	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Mayor Jordan				

8-0

8-0

Subject:		Parking Program Personnel			
Motion To:			Amend to reduce two positions in	Table to June 1, 2010	
Motion By:			Ferrell	Development Services & Thiel	
Seconded:			Lucas	transfer them to the Parking Fund.	Petty
B. 5 Unfinished Business Tabled to June 1, 2010 cc mtg.	Gray	N		✓	
	Thiel	N		✓	
	Cook	N		✓	
	Petty	N		✓	
	Rhoads	N		✓	
	Ferrell	✓		N	
	Lucas	✓		✓	
	Lewis	✓		✓	
	Mayor Jordan				

3-5
Amend failed

7-1

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Gray				
	Thiel				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Mayor Jordan				

Subject:		Amend §72.02 Impoundment Procedures			
Motion To:		Amend A.4.	2nd Read		
Motion By:		Cook	Cook		
Seconded:		Thiel	Petty		
C. 1 New Business Left on the Second Reading	Gray	✓	✓		
	Thiel	✓	absent during the vote.		
	Cook	✓	✓		
	Petty	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Lewis	✓	✓		
	Mayor Jordan				

8-0

7-0

Subject:		§94.09 Sale of Fireworks			
Motion To:		Amend only 94.05	Amend to go into effect January 1, 2011	2nd Read	
Motion By:		Petty	Rhoads	Petty	
Seconded:		Lewis	Thiel	Lucas	
C. 2 New Business	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	N	✓	
	Petty	✓	N	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	N	✓	
	Lucas	✓	N	✓	
	Lewis	✓	N	✓	
	Mayor Jordan				

8-0

3-5

8-0

Subject:	94.09 Sale of Fireworks.				
Motion To:	Amend Remove	Subsection D and G.	3rd Read	Pass	
Motion By:		Ferrell	Petty		
Seconded:		No Second	Thiel		
C.2. New Business <u>passed</u> 5320	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Petty	N	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Mayor Jordan				

7-1

8-0

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Gray				
	Thiel				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Mayor Jordan				

Subject:		Amend Chapter §163.14 Revocation or Change of Conditional Use			
Motion To:		Amend as Jeremy Suggested			
Motion By:		Thiel			
Seconded:		Petty			
C. 3 New Business Left on the first Reading	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Mayor Jordan				

8-0

Subject:		Amend Chapter 178 Outdoor Vendors			
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Gray	Ferrell		
Seconded:		Lewis	Thiel		
C. 4 New Business Passed 5321	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	Absent during the vote	✓	✓	
	Lewis	✓	✓	✓	
	Mayor Jordan				

7-0

8-0

8-0

Subject:	National Bike to Work Week				
Motion To:		<i>Amend Section 3</i>	<i>Approve</i>		
Motion By:		<i>Cook</i>	<i>Cook</i>		
Seconded:		<i>Petty</i>	<i>Petty</i>		
C. 5 New Business <i>Passed</i> <i>87-10</i>	Gray	<i>✓</i>	<i>✓</i>		
	Thiel	<i>✓</i>	<i>✓</i>		
	Cook	<i>✓</i>	<i>✓</i>		
	Petty	<i>✓</i>	<i>✓</i>		
	Rhoads	<i>✓</i>	<i>✓</i>		
	Ferrell	<i>✓</i>	<i>✓</i>		
	Lucas	<i>✓</i>	<i>✓</i>		
	Lewis	<i>✓</i>	<i>✓</i>		
	Mayor Jordan				

*8-0**8-0*

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Gray				
	Thiel				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Mayor Jordan				

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: **May 19, 2010**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of May 18, 2010**

1. **2010 Community Development Block Grant:** A resolution amending the 2010 City Budget by approving a budget adjustment to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.
2. **Animal Services Donation:** A resolution amending the 2010 City Budget by approving a budget adjustment to recognize Animal Services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.
3. **Arkansas Recreational Trails Program Grant:** A resolution expressing the willingness of the City of Fayetteville, Arkansas to utilize Federal-aid Recreational Funds.
4. **2010 Bulletproof Vest Partnership Grant:** A resolution authorizing the Mayor to apply for a 2010 Bulletproof Vest Partnership 50% matching grant through the U.S. Department of Justice in the amount of \$18,200.00 for the replacement of twenty-five Body Armor Vests for the Fayetteville Police Department.
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8. **Kearney National/Cooper Power:** A resolution authorizing purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approving a contract for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field from Kearney-National, Inc. through an assignment from Cooper Power Systems, LLC, in the amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.
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Aldermen

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Left on the First Reading

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Announcements:

1. City Council Tour: None

Adjournment:

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

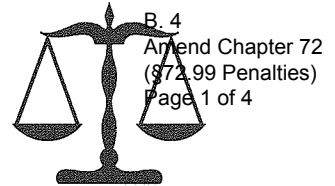
KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

Handed out at
Agenda Session
5/11/10

B.4.

Amend Chapter 72 (72.99 Penalties)



LEGAL DEPARTMENT

TO: **Alderman Bobby Ferrell**

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to be "Kit Williams", written over a horizontal line.

DATE: **May 6, 2010**

RE: **Limiting increased penalties for overparking to previous violations within preceding 12 months**

Please see the proposed changes in **bold** in the attached ordinance (§72.99). I believe this should accomplish your goal to apply the increasing penalties for second, third and subsequent offenses only if the previous offenses occurred within the preceding 12 months. Thus, alumni returning for a football game would "start over" at the first offense level and not be penalized for "youthful indiscretions" of overtime parking while students by being hit with the largest fine.

If this is satisfactory, please let me know and I will have copies for you to hand out at the Agenda or regular City Council meeting.

AGENDA REQUEST

FOR: COUNCIL MEETING OF JUNE 1, 2010

FROM:

ALDERMAN BOBBY FERRELL

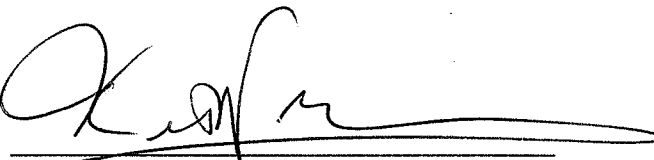
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend Article III Parking Meters And Electronic Payment Stations Of Chapter 72 Parking Regulations By Amending § 72.99 Penalties

APPROVED FOR AGENDA:


Bobby Ferrell, Alderman

5-11-10
Date


Kit Williams, City Attorney
(as to form)

5-6-2010
Date

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE III **PARKING METERS AND ELECTRONIC PAYMENT STATIONS OF CHAPTER 72 PARKING REGULATIONS BY AMENDING § 72.99 PENALTIES**

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 amends §72.99(B) **Penalties** by repealing it in its entirety and enacting a replacement §72.99(B) **Penalties** and a new subsection (C) as shown below:

“(B) The penalty for each violation of §§72.13, 72.57 or 72.58(J) shall be \$10.00, if paid before the issuance of a summons, citation, or arrest warrant; otherwise, the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$35.00; provided the penalty for each violation of §§72.13, 72.57, or 72.58(J) for a second offense **committed within 12 months of the first offense** shall be \$15.00 if paid before the issuance of a summons, citation, or arrest warrant; otherwise the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$40.00; provided the penalty for each violation of §§72.13, 72.57, or 72.58(J) for a third or subsequent offense **committed within 12 months of two previous offenses** shall be \$25.00 if paid before the issuance of a summons, citation, or arrest warrant; otherwise the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$50.00.

“(C) Parking citations for overtime parking may not be written for the same vehicle in the same space more than three times per day.”

PASSED and APPROVED this 1st day of June, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

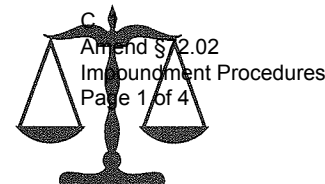
FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

*Handed out at Agenda
Session 5/11/10.
C.I. Amend 72.02
Impoundment Procedures*



LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Greg Tabor**, Police Chief

FROM: **Kit Williams**, City Attorney

A handwritten signature in dark ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: **May 11, 2010**

RE: **Minor adjustment to §72.02 Amendment**

With the permission of Mayor Jordan and Alderman Petty, I have made further recommended amendments to the §72.02 Amendment in your packet. The additional amendments are as follows:

(A)(4) In order to allow the Mayor or his designee (Parking?) to reduce the cost to the owner of cars that must be towed out of a city lot to make room for a special event or reserved parking, I inserted the last sentence: "The Mayor or mayor's designee may also order such illegally parked vehicle in a city parking lot to be towed at the vehicle owner's expense." Thus, an overparked vehicle in a paid parking city lot would be treated identically to a vehicle in a paid parking private lot with tows of \$60 instead of a police initiated tow at a minimum of \$100.

(A)(5) This subsection is to expressly authorize the police department to have a difficult to tow vehicle that a private parking lot property owner needs to be moved immediately nonconsensually towed by the police authorized towing company. So if the normal towing company for the private lot cannot tow such a vehicle, "the police officer may initiate a nonconsensual tow using the police department's normal towing company." I believe this will be a very rare occasion, but it is possible such an event could occur so we should authorize a solution to this potential problem.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §72.02 IMPOUNDMENT
PROCEDURES OF THE CODE OF FAYETTEVILLE TO
CLARIFY WHEN THE POLICE MAY INITIATE A
NONCONSENSUAL TOW OF A VEHICLE**

WHEREAS, the Fayetteville Police Department needs clear authority to initiate nonconsensual tows of vehicles obstructing driveways, over-parked in city owned lots, and for other good reasons; and

WHEREAS, the owners of any such vehicle which has been towed should have the same rights to prompt post-deprivation hearing as provided for vehicles immobilized for parking violations.

**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 amends **§72.02** by repealing its title and subsection (A) and enacting a new title and subsections (A) and (D) as shown below:

**“72.02 Nonconsensual, Police-initiated Towing, Storage and
Impoundment Procedures**

“ (A) In addition to ticketing an illegally parked vehicle, the police department is hereby authorized to initiate a nonconsensual tow or otherwise remove a vehicle from a highway, street, street right-of-way, or city parking lot and have it towed to a storage facility within Fayetteville or within three miles of the city limits under the following circumstances:

(1) When any vehicle is left unattended upon any bridge, viaduct or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(3) When any vehicle is parked illegally and left unattended upon a street or street right-of-way, and

- (a) constitutes a hazard or obstruction to the normal movement of traffic on the street,
- (b) obstructs a driveway or access to a fire hydrant,
- (c) is parked in a prohibited area or tow away zone that is so designated by a sign or other official markings, or
- (d) is parked continuously upon any street for more than seventy-two hours.

(4) When any vehicle is parked beyond the period allowed in a city parking lot and the parking space is needed for reserved parking or a special event or if parked more than 24 continuous hours beyond the period allowed. The Mayor or mayor's designee may also order such illegally parked vehicle in a city parking lot to be towed at the vehicle owner's expense."

(5) If a difficult to tow vehicle that cannot reasonably be towed by the property owner's normal towing company needs to be removed from a private parking lot, the parking lot owner may request the police department to initiate a nonconsensual tow. If the police officer agrees that the vehicle presents an unusual and difficult towing situation and the property owner presents facts to support a substantial need for the immediate removal of the vehicle, the police officer may initiate a nonconsensual tow using the police department's normal towing company."

"(D) The owner or lessee of any vehicle towed or impounded pursuant to this section is entitled to a prompt post-deprivation hearing and all rights thereunder as provided in §72.58(L). The owner or lessee of any vehicle properly towed pursuant to this section shall be required to pay the towing and storage costs."

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGENDA REQUEST

Added at
C. 5 National Bike to Work Week
Agenda Session
Page 1 of 6
5/11/10

FOR: COUNCIL MEETING OF MAY 18, 2010

FROM:

ALDERMAN KYLE COOK

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

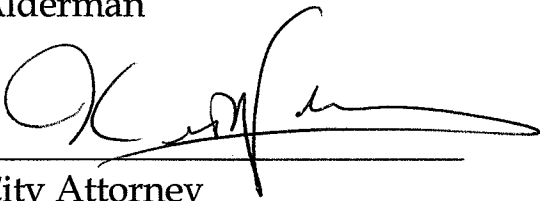
A Resolution To Encourage Fayetteville Citizens To Participate In National Bike To Work Week And To Make Fayetteville Even More Bicycle-Friendly

APPROVED FOR AGENDA:



Kyle Cook
Alderman

5/11/10
Date



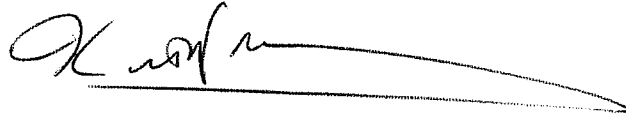
City Attorney
(as to form)

May 11, 2010
Date

TO: **Lioneld Jordan**, Mayor
City Council

CC: **John Coleman**, Sustainability Director

FROM: **Kit Williams**, City Attorney



DATE: **May 11, 2010**

RE: **Bike To Work Week Resolution**

Alderman Kyle Cook asked that I prepare the attached Resolution to support Fayetteville becoming even more "Bicycle-Friendly." John Coleman has invited City Staff to join in National Bike To Work Week (next week) and so I included support for that within Kyle's Resolution (with his consent).

Attached not only is the Resolution, but the information sheets entitled "Bicycle-Friendly Community Action Plan for the City of Fayetteville, Arkansas" that Kyle provided to me. Kyle reports Fayetteville has previously been awarded an Honorable Mention as a "Bicycle-Friendly Community". Kyle believes we can improve our standings if we can accomplish some of the goals of the Action Plan for Bicycle-Friendly Communities.

I plan to participate in Bike To Work Week for the City next week as we strive to increase the percentage of city staff participating. John Coleman is organizing this effort and will be recognizing the longest rider, etc. I might be in the money for the most out-of-shape, oldest rider.

John invites you and all city officials, employees and citizens to gather on the Square at 5:30 p.m. on Monday, May 17th for a ride to Mellow Mushroom for specially priced appetizers, etc.

RESOLUTION NO. _____

**A RESOLUTION TO ENCOURAGE FAYETTEVILLE CITIZENS
TO PARTICIPATE IN NATIONAL BIKE TO WORK WEEK AND
TO MAKE FAYETTEVILLE EVEN MORE BICYCLE-FRIENDLY**

WHEREAS, National Bike To Work Week is May 17th through 21st and is a great way to save money, promote physical fitness and health, reduce petroleum use and your carbon footprint, and enjoy Fayetteville's growing trail system; and

WHEREAS, City of Fayetteville employees have participated in National Bike To Work Week for years and want to increase participation this year; and

WHEREAS, Fayetteville received an Honorable Mention as a "Bicycle-Friendly" city last year, but can increase its ratings with reasonable efforts and our continued efforts to expand, connect and improve our trail system.

**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 encourages our citizens and especially our city employees to participate in National Bike To Work Week, May 17-21 and to chose to ride their bicycles on city trails and streets everyday rather than drive their cars for errands, visits and other short trips.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby acknowledges that Fayetteville is a "Bicycle-Friendly" city with an extensive and growing trail system that will soon stretch unbroken more than eight miles from Martin Luther King Boulevard through the Mall area to Old Missouri Road and beyond.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

BICYCLE-FRIENDLY COMMUNITY ACTION PLAN FOR THE CITY OF FAYETTEVILLE, ARKANSAS

Cities across the globe are managing diverse issues such as pollution, traffic congestion, traffic safety, accessibility, social inclusion, and economic growth. Increasing urbanization and sprawl is generating extra demand for quality public spaces and recreation opportunities. A renewed emphasis on security and the costs of dealing with the emerging epidemics of obesity and physical inactivity are stretching limited resources even further.

Solutions to these many challenges are equally diverse and complex. This Action Plan recognizes one policy initiative that addresses these challenges and contributes to many of the solutions necessary to improve the quality of life in cities: increasing the percentage of trips made by bicycle by making communities more bicycle-friendly.

Increasing bicycle use can:

Improve the environment by reducing the impact on residents of pollution and noise, limiting greenhouse gases, and improving the quality of public spaces.

Reduce congestion by shifting short trips (the majority of trips in cities) out of cars. This will also make Fayetteville more accessible for public transport, walking, essential car travel, emergency services, and deliveries.

Save lives by creating safer conditions for bicyclists and as a direct consequence improve the safety of all other road users. Research shows that increasing the number of bicyclists on the street improves bicycle safety.

Increase opportunities for residents of all ages to participate socially and economically in the community, regardless of income or ability. Greater choice of travel modes also increases independence, especially among seniors and children.

Boost the economy by creating a community that is an attractive destination for new residents, tourists and businesses.

Enhance recreational opportunities, especially for children, and further contribute to the quality of life in the community.

Save city funds by increasing the efficient use of public space, reducing the need for costly new road infrastructure, preventing crashes, and improving the health of the community.

Enhance public safety and security by increasing the number of “eyes on the street” and providing more options for movement in the event of emergencies, natural disasters, and major public events.

Improve the health and well being of the population by promoting routine physical activity.

Therefore we, the undersigned Fayetteville City Council Members, are committed to taking the following steps to improve conditions for bicycling and thus to realizing the significant potential benefits of bicycling in our community.

Action Plan for Bicycle Friendly Communities:

1. **TARGET STATISTIC:** Adopt a 2.5% target for commuters choosing a bicycle as the primary mode of transport by the 2020 census. (This will be almost five times the current national average of .55% and almost four times the 2000 Fayetteville figure of .69%.) We adopt a 5.0% target for commuters choosing a bicycle as the primary mode of transport by the 2030 census. (The current rate in Portland, Oregon—a Platinum-rated bicycle-friendly community—is about 6.0%). This target level provides a clear, measurable and achievable public goal that, when met, will drastically reduce the demand for

more roads and automobile parking in Fayetteville. This data will be collected from the U.S. Census Bureau's American Fact Finder service, which shows the number of Fayetteville commuters over 16 years old who reported using a bicycle as their primary means of transportation to work.

2. **INFRASTRUCTURE:** Provide safe and convenient bicycle access to all parts of the community through a signed network of on and off-street facilities, low-speed streets, and secure parking as outlined in the adopted Active Transportation Plan and Bicycle Parking Ordinance.
3. **MODEL EMPLOYER:** Make the City a model employer by encouraging bicycle use among its employees. Ensure employees awareness of the secure bicycle parking, employee showers, and city bicycle fleet available for their use. Cover the cost for up to five City staff members to participate in a Traffic Skills 101 class as offered annually by the Bicycle Coalition of the Ozarks. (Each two-day class costs \$50) This class will better equip staff to take advantage of every opportunity to create a more bicycle-friendly community. Especially encourage police personnel to take advantage of this class.
4. **EDUCATION:** Educate all road users to share the road and interact safely. Continue to provide instructional roadway and trail etiquette videos on government television, instructional signage on routes and trails, and educational guidelines to residents and visitors through the Active Transportation map brochures. Continue to host the "Share the Road" PSAs on the City website, and promote the distribution of both the PSAs and the etiquette videos.
5. **ENFORCEMENT:** Enforce traffic laws to improve the safety and comfort of all road users, with a particular focus on behaviors and attitudes that cause motor vehicle/bicycle crashes.
6. **ENCOURAGEMENT:** Develop special programs to encourage bicycle use in communities where significant segments of the population do not drive and where short trips are most common. Continue to prioritize bicycle infrastructure near schools. Continue to provide technical grant assistance to bicycle advocates working to instigate bicycle safety education into Fayetteville's public schools. Continue to support special annual cycling events such as the Joe Martin Stage Race, the Bicycle Commuter Challenge and Kid's Bicycle Safety Rodeo through police staff time, appropriate street closings, and equipment support. Provide official support of the bicycle rental program offered by the Visitor's Bureau through the City Administration members serving on the Advertising and Promotion Commission.
7. **INTERMODAL TRAVEL OPTION:** Promote intermodal travel between public transport and bicycles by linking funding for Ozark Regional Transit to progress towards adding bike racks on all busses, and also changing policy as required to facilitate prominent, accessible transit stop development. Promote potential regional mass transit connectivity through continued support for the Northwest Arkansas Alternatives Analysis Study.
8. **FEEDBACK MECHANISM:** Continue to act on resolutions from the Active Transportation Committee, and the Fayetteville Forward Transportation Group. Encourage local cyclists to identify maintenance needs, potential infrastructure improvements and bicycle policy changes through the Active Transportation Committee meetings, and through suggestion boxes located on each trail. Provide staff support to the Trail Trekkers to ensure trained observation and assistance to all trail users.

"We will promote safe and environmentally friendly cycling and walking by providing safe infrastructure and networks..." World Health Organization Charter on Transport, Environment and Health, 1999.

"The US Conference of Mayors calls on cities and communities to promote increased safe bicycle use for transportation and recreation..." US Conference of Mayors, 2003.

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
May 4, 2010**

A meeting of the Fayetteville City Council was held on May 4, 2010 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: Mayor Jordan announced it was Public Service Recognition Week and he thanked City employees for their hard work.

Mayor Jordan recognized Julie McQuade, Neighborhood Coordinator, as the 2010 Volunteer Coordinator of the Year in the State of Arkansas.

Mayor Jordan recognized the Spring International Language students.

Presentations, Reports and Discussion Items: None

Agenda Additions: None

Consent:

Re-approval of the March 16, 2010 City Council meeting minutes.
Approval of the April 20, 2010 City Council meeting minutes.

Approved

Dean Crowder Construction, Inc.: A resolution awarding Bid #10-23 and approving a contract with Dean Crowder Construction, Inc. in the amount of \$4,963,386.00 for construction of biosolids management solar dryers, WSIP Subproject Bio-1, and approval of a \$150,000.00 contingency.

Resolution 75-10 as recorded in the office of the City Clerk.

Williams Tractor, Inc. Bid #10-22: A resolution awarding Bid #10-22 and approving the purchase of one (1) four-wheel drive New Holland T6050 Plus diesel tractor from Williams Tractor, Inc. in the net amount of \$39,191.00 after trade-in, for use by the Fayetteville Executive Airport-Drake Field.

Resolution 76-10 as recorded in the office of the City Clerk.

Alderman Thiel moved to approve the Consent Agenda. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

Unfinished Business:

Capital Improvement Plan: A resolution adopting the 2010-2014 five year Capital Improvement Plan. *This resolution was tabled at the April 20, 2010 City Council meeting to the May 4, 2010 City Council meeting.*

Paul Becker, Finance & Internal Services Director: This is a Capital Improvement Plan for the City for the next five years. The 2010 portion of the plan was approved or adopted as part of the annual 2010 budget process. The total of this plan is \$90 million. This is a plan that is subject to change due to economic conditions and changes in priority. It is a plan not an appropriation. It does not authorize the City to spend any thing.

Alderman Lucas: The Parks Department has allocated money for the development for Gulley and Wilson Park almost every year. Walker Park only had one year where there was going to be improvements and Bryce Davis Park didn't have any. What is the thinking was behind that? If those things aren't in the plan they are not looked at later on.

Paul Becker: That was the recommendations of the Parks Director and it went through the Parks Board. That's what they felt the priority was. This is something we can bring up and addresses each year with the annual budget discussions.

Alderman Lucas: There is an opportunity.

Paul Becker: Sure, absolutely.

Alderman Lucas: Is there any mention of a new fire station maybe in the northwest?

Paul Becker: There's nothing at this point for an expansion of a fire station. I do not see the funding available at this point in time.

Alderman Lucas: That is something that needs to be looked at. How many unmarked police cars do we have?

Greg Tabor, Chief of Police: The unmarked cars are the ones the detectives, administrative staff and other divisions use outside of the marked patrol cars. Twenty three is the number we have and they are on a five year replacement.

Alderman Lucas: They're driven that much?

Greg Tabor: Driven a lot. In 2009 we had money to replace them but we didn't feel they had enough miles on them yet so we rolled that money forward to 2010. We will continue to do that until a car needs to be replaced.

Alderman Lucas: Thank you. One of the unfunded items was the fire traffic preemptions signal. I feel that is very important for the safety of the citizens, our City, and Firemen.

Paul Becker: I believe the preemption is partially funded.

Alderman Lucas: This is very important for our fire trucks not only for them to get to a fire faster but also for safety at intersections.

I hope that Salem to Holcomb Elementary and Lewis Avenue sidewalk will be completed in the next four years.

Paul Becker: That is determined by the Street Committee.

Alderman Lucas: I'm just putting it on the radar. Why have extensions been required for the Wilson spillway?

Paul Becker: I understand it had to do with the engineering study. The federal funding is still in place. It has been extended through this period.

Alderman Lucas: How long will the federal funding be for?

Paul Becker: I thought it was another year.

Chris Brown, City Engineer: We have an extension on the project through November of this year. We will be putting that project out for bid very soon. We are trying to get additional funding because the project is going to cost more than was originally anticipated.

Alderman Lucas: Thanks Chris.

Alderman Lewis: I would like to second the parks part. I hope that Ward 4 parks get a little more weight. She voiced her concerns about page 10 of the plan (Transportation Services).

Paul Becker: The best place to address that would be during the annual budget process.

Alderman Lewis: It would help when we are presented with the proposed budget if the Council could see those things when we are reviewing the budget.

Alderman Gray: Paul, have you had a chance to compile the list I asked for?

Paul Becker: I am reviewing it and should get it to you tomorrow morning.

Alderman Gray: I asked for a list of CIP for the year of 2010 that did not have employee salaries connected to it, in hopes that we could make some adjustments and push some projects forward to later years, and leave some money for operations so we do not have to have our employees taking furloughs.

Paul Becker: I have prepared a list and I will forward that as soon as I am done reviewing it.

Don Marr, Chief of Staff: We will need a new agenda item if we are going to do a transfer from Capital to Operations outside of this CIP plan.

Alderman Gray: If we vote to accept this plan we can still change it later?

Don Marr: You can. In this plan the 2010 items are already adopted within the budget plan. It would require a budget adjustment for you to move capital to Operations outside of this plan.

Alderman Gray: Thank you.

Alderman Ferrell: We have \$5,000,000 budgeted for trails but if you look at how much we have budgeted for drainage I think we need to re-slice that pie. This is one of the problems I have heard from citizens.

Mayor Jordan: Bobby, you can come back later even if we pass this plan.

Paul Becker: Depending on the wishes of the Council we will go in the direction we are pointed at that point in time.

Alderman Ferrell: If you compare the amount of money budgeted for drainage as opposed to what it is for trails it's like \$190,000 a year for drainage and around a million for trails.

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

Resolution 77-10 as recorded in the office of the City Clerk.

New Business:

VAC 10-3539 (Laura McKinnon): An ordinance approving VAC 10-3539 submitted by Jorgensen and Associates for property located along the eastern property line of 740 Lollar Lane to vacate a portion of a 15-foot alley that runs from College Avenue to the subject property, a total of 1,875 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Internal Services and Development Director: Planning Commission and staff are recommending approval of this ordinance. He gave a brief description of the ordinance.

Alderman Lucas: Is it still connected to College on the north side?

Jeremy Pate: On the north side where it was connected to Prospect that portion has been vacated. The south side right of way connects to College.

Alderman Lucas: It still connects to College.

Jeremy Pate: Yes, that part is not being vacated.

Alderman Lucas: The easement divides the two property owner's property.

Alderman Petty: Is that connected to Prospect on the north side?

Jeremy Pate: The right of way was connected there. I understood there was never an alley. It was vacated.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5318 as Recorded in the office of the City Clerk

VAC 10-3540 (First State Bank of NWA): An ordinance approving VAC 10-3540 submitted by First State Bank of Northwest Arkansas for property located at 2292 North Covington Park Boulevard to vacate utility easement, a total of 33 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. We recommend approval of this vacation.

Alderman Lewis: Did they survey the property when they were going to sell it or buy it?

Jeremy Pate: That's correct.

Alderman Ferrell: We've had no input from the ward on this.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5319 as Recorded in the office of the City Clerk

Amend Chapter 72 (Nonconsensual Towing): An ordinance to amend Chapter 72 Parking Regulations of the Fayetteville Code to enact regulations for nonconsensual towing of vehicles within the Entertainment District Parking Zone.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I was asked to draft an ordinance in relation to the law that was changed by Senator Sue Madison and Representative Lindsley Smith to protect our citizens and customers in the Dickson Street area where we have had complaints about towing.

Alderman Thiel thanked the staff, City Attorney Kit Williams, Representative Lindsley Smith and Senator Sue Madison for helping make this something we can do. She stated she supports this and is glad that the City is moving forward with it.

Jim Erwin, Erwin's Wrecker Service: Spoke in opposition of the ordinance. He voiced his concern about the Police Departments contract with some wrecker companies and the rates in those contracts.

Mayor Jordan: Is the Police Departments towing rate different from this rate?

City Attorney Kit Williams: The state statutes gave the local police departments throughout the state the right to set rates for police initiated nonconsensual tows. The City Council does not have the rights to do that or any authority regarding those rates.

Greg Tabor, Chief of Police: Two years ago we went from a rotation wrecker system to a single wrecker service. We sent out an RFP or RFQ and Greenland Wrecker was selected as our primary wrecker provider. We also picked two alternates, A & B Towing and Hog Country. We met with the three companies and established rates for every service they provided. In years past this Dickson Street towing was a disaster. I think this is a good thing to do and it will solve a lot of problems and complaints.

Alderman Rhoads: Chief, what does it cost to tow a car out of Dickson Street if it has been sited for something or if there is an accident?

Greg Tabor: I do not have the list in front of me. I recall \$100.

Jim Erwin voiced his concern again about the rates that are being charged by the towing companies that have contracts with the Police Department. He stated I believe it would be unjust to regulate that and it's unjust for what the citizens and out of town people are being told if their car gets towed.

Alderman Petty: You mentioned a charge per day for impoundment, could you read that again?

Jim Erwin: They charge \$30 for outside storage per day and Kit Williams says \$10 per day. Inside storage climate controlled is \$100 per day and I only charge \$50.

Alderman Petty: Thank you. I know what he is talking about is a completely different set of ordinances. I like what Kit has drafted on the paid parking plan side of things. As far as the Police Department nonconsensual tows I think the gentleman had some good points. Mayor I would appreciate it if you would look into the storage fees and things like that.

Mayor Jordan: We will.

Alderman Ferrell: Kit, how long ago was it that the state changed the law and removed any decision making from the Council and gave it to the Police Departments?

City Attorney Kit Williams: For the Police initiated tows?

Alderman Ferrell: Yes.

City Attorney Kit Williams: When I first looked at it that was the way it was. I don't know how long it has been in existence.

Alderman Ferrell: Thank you.

Alderman Lewis: The Police Department contracts with Greenland Towing but if Greenland tows somebody as a non police requested tow they have to charge these rates?

City Attorney Kit Williams: No, they charge the owner, whose car has been towed, the rates that are posted by the Greenland Auto Company.

Alderman Lewis: Don't they have to follow this ordinance if it is not a police requested tow?

City Attorney Kit Williams: If it is not police requested then yes this ordinance would control throughout Fayetteville. It has special rates for the Dickson Street area but outside of the Dickson Street entertainment area it is different.

Alderman Lucas: If the Police Department instigates a tow for someone that is parking illegally in the Dickson Street area, which one will apply?

City Attorney Kit Williams: If the police initiate a tow they will use their current agreement.

Greg Tabor: There would be very rare occasions that we would tow someone out of a private parking lot.

We have been using Greenland as part of the contract for two years, if I remember correctly, prior to that we were having wrecker complaints regularly. Since June 2008 I am not aware of a single complaint from a citizen about their car being towed with Greenland towing. I think that speaks highly of them and the system that we put in place and how well it works.

Alderman Ferrell: Does Greenland take credit cards?

Greg Tabor: I do not know the answer to that.

City Attorney Kit Williams: In the contract they had to accept various forms of payment and have change available. We put a lot of requirements on their storage yard that no other towing company has to meet.

Alderman Ferrell: I haven't heard any complaints lately but one of the complaints I use to hear were you had to have cash money.

Greg Tabor: There use to be a wrecker business that made you pay cash money. As far as I know they are no longer in business.

Kelly Thomas, Towing Plus, 1418 South School Avenue: When you considered the prices that you are going to require for the Dickson Street area did you consider the cost the wrecker companies incur? This might put a lot of people out of business.

Mayor Jordan: I can't tell you the amount of phone calls that I have received. Folks have come to a play at the Walton Arts Center and they park in a private lot and then their vehicle is gone. They have to go outside of town to get their vehicle and then find out they have to pay by cash. They then have to return to get cash. Kit do you remember some of the charges?

City Attorney Kit Williams: Well over \$100 and if they complained it would be more than that plus they were charged for the towing distance and storage.

Mayor Jordan: There are folks that have gone through a lot of grief because of nonconsensual towing.

City Attorney Kit Williams: I have on occasion used towers myself consensually and I have not had to pay \$60. There are additional problems with nonconsensual towing. In talking with the Mayor about this we determined \$60 was a fair fee.

Lee Dancer, A & B Towing: The pricing is not fair because the average for a wholesale tow across the United States is \$64. The price for a police call for nonconsensual is \$123 or \$124. He spoke on the problems towers have with nonconsensual towing.

Alderman Thiel: After hearing some of these concerns they are valid concerns. I support the concept because we have had a lot of issues. Could staff check into some of the issues mentioned and visit a little further with the Police Department.

City Attorney Kit Williams: I certainly have no problem with that. As stated in my memo occasionally a difficult towing situation could occur in which a larger nonconsensual towing fee would be justified. The property owner could call the police in this rare circumstance and if the police officer agrees he can initiate a nonconsensual tow.

Alderman Thiel: Who calls the police officer?

City Attorney Kit Williams: The property owner where the car is parked illegally.

Alderman Thiel: The towers that come down are not called by the owners every time these cars are towed.

City Attorney Kit Williams: That would be in the rare circumstance where there would be a significant problem with a tow so a larger fee would be justified.

Alderman Petty: I concur with Alderwoman Thiel. In addition I would like to see the national averages.

Alderman Thiel: What about just the state averages?

Alderman Petty: It might be good to get both.

Left on the First Reading

Amend Chapter 72 (§72.18 Residential Parking Permit): An ordinance to amend Chapter 72 Parking Regulations by enacting §72.18 Residential Parking Permit Program for Entertainment District Parking Zone.

City Attorney Kit Williams read the ordinance.

Sharon Crosson, Parking and Telecommunications Manager gave a brief description of the ordinance. She stated if this is passed by the Council, staff will bring this back to the Council in November to look at again and address any issues that have come up. We will make any changes that need be made at that time.

Alderman Thiel: We have visited with residents that still have concerns. Matthew mentioned he wanted to hold this on this reading so we would have plenty of discussion.

Don Marr: It is the staff's recommendation to make sure it goes through all three readings as we continue to get information.

Alderman Lucas: What is the zoning on Locust Street?

Don Marr: Downtown General.

Alderman Lucas: That's business mix.

Don Marr: It is a mixed use.

Alderman Lucas: If there are businesses on that street, and it is for residents only, where do they park?

Sharon Crosson: Businesses would have to park in the driveways or parking lots that the businesses have provided, or the green and mixed use areas and pay for parking.

Alderman Lucas: There is no mixed use on Locust.

Sharon Crosson: No, not directly on Locust.

Alderman Lucas: Isn't that a conflict?

Don Marr: The primary properties, that are business related, have parking lots. The remaining properties are either rental or owner occupied properties that are residential. The property could change to function as an office business or something of that nature.

Sharon Crosson: We considered making more than three blocks mixed use but we felt the residents would not be protected during times of special events or high peak times.

Don Marr: Long Ago Antiques is within the stretch you are talking about and they have pull in parking.

Alderman Lewis: There is a different land use happening in that area because it is Downtown General and by right you can have any sort of mixed used business or residential in that area. I feel strongly that the Downtown General zoning, because of the nature of it, deserves to have a different mechanism in place that would address the business and residential use so that if you have a business you have a permit so you are allowed to park there.

Sharon Crosson: We have to be careful with all the other businesses on Dickson Street. The entire Entertainment District might have that same argument that they are a business and they want a hang tag for their customers. I would think it would have to be uniform for businesses.

Alderman Lewis: The fact is it is a different type zoning. It maybe a zoning issue more than a parking issue.

Don Marr: Is your direction that you believe the street should be a mixed use parking area which allows both paid and residential parking like Spring Street? Or is it that it should remain residential with allowances for free customer parking for those locations that are zoned as business?

Alderman Lewis: I'm not saying free parking, may be those businesses have a permit and they get stickers.

Don Marr: Which zone is it? Is it still a residential or mixed use parking zone?

Alderman Lewis: You have to protect those residents. We have designated that we are allowing businesses within that residential and they need to be allowed to park in those areas.

Sharon Crosson: That would probably be the same as a mixed use area.

Juli Dorrough: Chair of the Dickson Street Neighborhood Association: Shared the concerns they have with the ordinance.

City Attorney Kit Williams encouraged the City Council to closely read his memo. He stated this is new area of the law and I can not give you absolute assurance this is within your legal power to do.

Alderman Petty: If we change that to mixed use parking would that do anything to alleviate your concerns?

City Attorney Kit Williams: No, the big concern would be that we would be taking what is public parking spaces as they exist now and we would be designating them as private parking

spaces for people that live in that area. It would be taking a public asset and making it a private asset.

Sharon Crosson: Addressed the concerns made by the Neighborhood Association.

Alderman Petty: For the people that rent or have a lease couldn't we set an expiration date when the lease ended?

Sharon Crosson: Yes, and that was mentioned to the City Attorney.

City Attorney Kit Williams: This is an administrative decision. However you want to administer it you can.

Sharon Crosson: A lot of renters are from out of town and their vehicles will be registered to another state.

Alderman Petty: This clears up the problem. As they move out their tags expire. I tend to agree with the neighborhood that residents should have a pass or two on hand for guests.

Don Marr: We believe we are going to address the visitor's ability to hand this. There is a difference between people who come in town to visit for a length of time and people who live here and drop by. We will try to make a recommendation in light of your comments and the neighborhoods comments. Staff had discussions with the Mayor about the residential parking program. Every time this has come up, one of the things that we hear is the fear that when we go to paid parking it will drive parking to residential neighborhoods. We think that the value to protect our residential neighborhoods in our Downtown core area is important and has a purpose.

Left on the First Reading

Amend Chapter 72 (Electronic Payment Station Program): An ordinance to amend Article III Parking Meters of Chapter 72 Parking Regulations by changing its name and adding provisions for an electronic payment station program for paid parking lots and paid on-street parking and for other reasons.

City Attorney Kit Williams read the ordinance.

Don Marr, Chief of Staff: What prompted this was one of our largest economic drivers in the Dickson Street area is the Walton Arts Center. Their number one customer service satisfaction survey issue was parking. We wanted to address towing to improve the customer service. We wanted to provide a revenue stream. There would be less opposition in consideration for this financial support if the City was also addressing at the same time future funding to establish a parking deck or parking available with closer proximity to the entertainment areas on Dickson Street. We are looking at this funding stream to be able to address each of those issues. We want to continue to support the Walton Arts Center as well as our other merchants that are economic drivers on Dickson Street. Hopefully through this process we will continue to educate

the public on the free parking that remains throughout the City of Fayetteville's entertainment area.

We are one of the only cities of this size, in a University town, that doesn't have paid parking already so it gives us a new revenue stream to adjust some of those things that will particularly help this area grow.

Sharon Crosson, Parking and Telecommunications Manager gave a brief description of the three main public lots that are directly surrounding the Walton Arts Center and what the proposals are for those lots. She stated these lots will be pay as you stay lots and we have offered with this system a visitor reservation system.

Don Marr: I want to make a few points on the reservation system. We plan to start this with a smaller number to break it in. There will be a higher charge on the reservation system because you are not taking the chance of coming and there not be a space available on the lot. You are paying for the convenience of a space being there.

Sharon Crosson continued explaining the reservation program, the lot proposals and the payment methods. She stated we will offer monthly parking from 10:00 a.m. until 4:00 p.m. and a validation program.

Alderman Petty: What happens if the network goes down?

Chris Pecoraro, Parking Consultant: There are two components, the on-street component which is the pay by space product. They aren't connected on a hard wired network. They connect using the cellular network.

Alderman Petty: So during an event where we are getting a lot of people downtown with many people on their cellular phones and the networks run into problems because it is over capacity. Do we anticipate problems with that here?

Chris Pecoraro: There is a couple of instances where you are going to go out on the cellular network, one is if someone is trying to add space to a meter from a different meter or when we are going out for a credit card authorization.

Alderman Petty: So if it fails a connection will it hold them and batch process as soon as it gets one?

Chris Pecoraro: Yes. That is an option you have when you configure the system to batch process if you are off the air or can not accept the transaction but obviously you want to accept the transaction. He explained how the rate program is designed for the City.

Alderman Lewis: On those where you get a ticket, what if you lose your ticket?

Chris Pecoraro: You pay the max.

Alderman Lewis: How do you tell it that you lost your ticket?

Chris Pecoraro: It is an option on these products to have a lost ticket feature so you could hit a lost ticket button on the machine and it will process you at the maximum rate.

Alderman Lewis: We have handicap spots that are already designated. Are the pay stations close to those or how is that being addressed?

Sharon Crosson stated the handicapped spaces are in the parking lots. She explained where the pay stations would be and how far they would be from the handicap parking spaces.

Chris Pecoraro further explained the reservation system for the Walton Arts Center.

Alderman Lewis: You can buy a proximity card from the City and be able to park from 10:00 a.m. to 4:00 p.m.?

Sharon Crosson: You can actually get there before 10:00 a.m. We have free parking before 10:00 a.m.

Alderman Lewis: Do other cities have proximity access cards if you want to come frequently to the downtown area?

Chris Pecoraro: The proximity cards are for monthly parkers. If it is a monthly application you sell them a monthly pass and we have restricted rules on those passes.

Jodie Beznoska, Vice President of Communications, Walton Arts Center thanked the Council and everyone that has worked hard on this project. She expressed her concern with the current parking around the Walton Arts Center. She stated we are very excited about this plan and what it could mean for Dickson Street. We are in support of it and we hope you will support it.

Mayor Jordan: Have you had frequent complaints about the parking as far as towing?

Jodie Beznoska: People are so frustrated with the parking. We have situations where patrons have parked in the wrong place and been towed. They tell us how much they disliked what happened to them and that they are never coming back to the Walton Arts Center.

Mike Belmont, resident of 4360 W. New Bridge Road volunteer at the Walton Arts Center spoke on the complaints that he has heard about the parking. It is a public relations issue. He spoke in favor of the proposal.

Virginia Belmont, volunteer at the Walton Arts Center also spoke in favor of the proposal.

Hershey Garner, Board Member at the Walton Arts Center: We appreciate what the Arts Center does in their educational programming as much as anything else. Parking is critical. We appreciate the work that has been done and ask you to support it.

Frank Sharp, resident of Ward 4 spoke in favor of the proposal.

Stuart Walker, Owner of Club House Fitness on Dickson Street: I strongly support this.

Steve Clark, President of the Chamber of Commerce thanked the Mayor and Council for their participation in addressing this complex but very important issue for the businesses in our City. He spoke in favor of the proposal and stated I hope you will be supportive of this.

Ted Belden, resident on the Square and also involved in the Underwood Project stated we are fully behind what is being presented tonight and look forward to it happening and working with the City in helping us provide parking for our patrons.

Tina Hodne, board member of the Walton Arts Center Council expressed her appreciation to the Council and staff for having a broad, open, cooperative conversation, with merchants, the Walton Arts Center, business owners, residents and private lot owners. She stated parking is an issue. She spoke in favor of the proposal and asked the Council to support the plan.

Alderman Rhoads: Mr. Sharp indicated there was a commitment by the City Board 30 years ago to do 1% or 1 penny of a tax on an ongoing basis toward the arts. Kit do you have any recollection of that?

City Attorney Kit Williams: I do not have a direct recollection of that but I do remember when Frank Sharp was leading the City Board at that point in time in the direction to try and support the arts and make this a reality. We certainly owe him and that Board a great debt of gratitude. They pulled it off in conjunction with the University to be able to build this. There is really nothing in my opinion that is a legal requirement for the City to do anything like that. The tax that was passed back then was probably a County sales tax which did not have any restrictions on how we could use it. The operating penny that we are paying right now was last authorized in 2002 for another 10 years and it has no restrictions on how it is suppose to be used. There was a resolution that was passed prior to that saying that it would be split between Capital and Operations. The City Council has complied with that even though that was in the resolution and not on the ballot. The ballot controls as we know from the HMR tax situation. There is nothing legally required to do that so that is up to the City Council and the Mayor when they do the budgeting program.

Alderman Lucas: Ann Henry was on the board and I believe at that time they committed a certain amount to build the Walton Arts Center.

City Attorney Kit Williams: We split the cost with the University to acquire the property and build the Arts Center. That was eventually paid off.

Alderman Rhoads: With the help of the Walton's.

City Attorney Kit Williams: The Walton's donated the money to the University. That is the money the University used. We used taxpayer money to match it and appropriately named it the Walton Arts Center.

Left on the First Reading

Amend Chapter 72 (§72.99 Penalties): An ordinance to amend Article III Parking Meters and Electronic Payment Stations of Chapter 72 Parking Regulations by amending §72.99 Penalties.

City Attorney Kit Williams read the ordinance.

Sharon Crosson gave a brief description of the ordinance. She stated the citation rate has not increased since 2002. She gave a summary of the proposed new rates.

Alderman Ferrell: A couple of us had a concern about the calendar year, year to date section.

Don Marr: We are expecting one of you to make an amendment on that at some point.

City Attorney Kit Williams: I would appreciate if an alderman wants to make an amendment to get with me so I can get the proper language drafted up.

Don Marr: The information that Alderman Ferrell is talking about is the third ticket violation is during your life time. There was no time frame on it. Once you got the third ticket your tickets would be \$25 from then on. The Council has asked the staff to look at a rolling 12 month time period. We are expecting an Alderman to make an amendment on that.

Alderman Gray: I agree with raising the amounts charged.

Left on the First Reading

The Parking Consultants, Inc.: A resolution to authorize negotiations with Amano McGann for the lease/purchase of up to 19 electronic pay stations and 3 gated parking lot systems with digital pay stations and other equipment needed if the City Council approves paid parking lots and on-street parking spaces in the Entertainment District Parking Zone.

Paul Becker gave a brief description of the resolution.

Alderman Ferrell: I understand this is going to be a five year lease with option to purchase?

Paul Becker: We would be purchasing it directly from the vendor. We would pay full purchase price and pay back the Replacement Disaster Fund as though it were the loaning agency. The reason we can do that is because the Replacement Disaster Fund money came from the General Fund.

Alderman Ferrell: Once the purchase is made it is made.

Don Marr: Our plan was to pay this back within a 24 month period. We originally looked at the total cost of this equipment and said what would it cost if we do it and do we have enough money in the parking fund to be able to pay for it all directly out of that fund at this time and we did not. We also were trying to get an allocation of dollars to the Walton Arts Center and to the parking deck. We felt the best way to do that in year one is that we would be looking at a lease to purchase. We based out calculations off of what we anticipated to be an estimated lease for that first year. Our other rational was the money that we used to buy the deck would give us an asset that we believe would increase in value. We also thought it was appropriate to take the dollars that were going to be generated by the parking revenues and have it pay for the equipment rather than using the revenues that had been collected by meters and citations where we already had paid parking, which was primarily the downtown area. So it matched use of revenues to land purchase.

Alderman Lewis: I like the idea of going into debt to ourselves rather than someone else. I think it is a really good tool.

Alderman Thiel: Did you say there will not be interest charged or the City will charge interest to the fund?

Paul Becker: The City will charge interest to the fund. At our cost to capital which is currently about 2%.

Alderman Rhoads: That is a fund that we would have used a couple years ago with the storm?

Paul Becker: In fact we did.

Alderman Rhoads: How much did we use during that?

Paul Becker: The total cost was roughly \$5,000,000 but we cash flowed it because we kept getting reimbursements from FEMA. If we were to have a disaster of that magnitude I would assume it would be FEMA eligible and we could cash flow it partially. We would still have \$2,000,000 in there to work with.

Alderman Rhoads: Do you foresee any emergency that is not covered by insurance, FEMA, or some other governmental program that would rise greater than \$2,000,000?

Paul Becker: I don't but of course you never know.

Mayor Jordan: I'm not saying there's not a little bit of risk. There is risk but I think it is minimal. I would rather be paying our self back than someone else.

Alderman Rhoads: Is it possible if the revenues are great enough to pay it off faster than 24 months?

Mayor Jordan: Yes.

Paul Becker: I think that would give sufficient time because we don't know what the revenue stream is going to be.

Alderman Rhoads: It would seem this resolution should be tabled.

Paul Becker: We need to start negotiating for the price.

Alderman Rhoads: The negotiating could get to the point where we are ready to sign a contract and we wouldn't have to sign the contract until the rest of these ordinances are passed.

City Attorney Kit Williams: I worded the resolution so that City Council shall make the final decision on any proposed legal contract. They can only negotiate it so far.

Mayor Jordan: I want the public to understand it is not like we are already passing something to where it looks like we are going to pass everything else.

Don Marr: The resolution is only allowing us to negotiate the rate. The contract will have to come back and be approved by you.

Alderman Lucas: You were going to negotiate and then we were going to decide whether we were going to put it out for bids?

Paul Becker: No. It was going to be a negotiation with the vendor because this is similar to all the other equipment we have in the City. It was a single source with that particular vendor.

Alderman Lucas: That is the reason we didn't put it out for bid?

Paul Becker: That's correct.

City Attorney Kit Williams: It will have to be an ordinance waiving competitive bidding when they bring it back to you with strong reasons why this amount of money should not be put out for bid.

Alderman Lucas: It said they will carefully consider whether sufficient grounds exist to waive competitive bidding.

City Attorney Kit Williams: Yes, I put that in because I wanted to see some good grounds presented to the City Council if you are going to waive competitive bidding for something that could be well over a half million dollars.

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

Resolution 78-10 as recorded in the office of the City Clerk.

Parking Program Personnel: A resolution approving a budget adjustment in the amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone and approving the addition of 2.5 full-time equivalent positions in the Parking Management Division for the 2010 budget.

Sharon Crosson: This agenda item is contingent upon everything else we have done tonight. She gave a brief description of the ordinance.

Don Marr: We have no intention of adding 2.5 employees if you don't pass the paid parking ordinances.

Tim Vogt, Director of Finance, Walton Arts Center, stated he wanted to commend the Mayor on his leadership for bringing a comprehensive solution to the parking issues in the Dickson Street area. He stated it has been his pleasure to work with Sharon, Terry and Chris and he appreciates them listening to their concerns, suggestions and feedback. He stated he supports the proposal.

Eric Ward, Parking Systems of America: Spoke in favor of the resolution.

Curt Rom, Walton Arts Center Council spoke in support of the resolution. This resolution will provide a look into securing the future of a vibrant community in Fayetteville.

Terry Trotter, Ward 2 resident and Chief Operating Officer at the Walton Arts Center spoke in support of the resolution.

Don Marr: The City Attorney provided you with a memo that spoke on the Attorney General's opinion and the cities ability to pay revenues from the paid parking program and invest into the Walton Arts Center. The requirement being that the City receives sufficient adequate consideration for that contribution just as you do today with the Boys and Girls Club through programming and the Botanical Gardens.

Alderman Thiel: I appreciate that. We need to look at comparable services.

Don Marr: We are trying to make sure that we are able to substantiate that and minimize potential risk associated with that contribution.

Alderman Rhoads: The resolution indicates it has a budget adjustment for \$498,000 for the implementation of funding for the parking program and the addition of 2.5 full time positions. I am not sure it is clear to the public what that \$498,000 includes. If we could indicate at the next meeting what amount goes for the personnel, the Walton Arts Center, the equipment, and the lease?

Don Marr: We will prepare that for you.

Alderman Ferrell moved to table the resolution to the May 18, 2010 City Council meeting. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the May 18, 2010 City Council meeting.

Announcements:

Alderman Lucas announced Thursday is First Thursday.

Meeting adjourned at 9:50 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

Handed out at the 5-18-10
City Council meeting.



LEGAL DEPARTMENT

TO: **Lioneld Jordan, Mayor**
City Council

CC: **David Dayringer, Fire Chief**

FROM: **Kit Williams, City Attorney**

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: **May 13, 2010**

RE: **Modification of §94.05**

Pursuant to the Administration's and City Council's request during the Agenda Session, I have slightly modified the proposed ordinance to allow the sale of fireworks, but no longer repeal the current code limitations on the use of fireworks within Fayetteville. Instead of repealing all of §94.05, I propose only repealing subsection (A).

"It shall be unlawful for any person to offer fireworks for sale at retail within the city."

The remainder of §94.05 {subsections (B) through (G)} control the use, but not the sale of fireworks. They shall be relettered (A) through (F), but there will be no change whatsoever in the current city law relating to the use of fireworks in the City.

The Administration may bring forward a proposal to change our use regulations, but it is not included or affected by this ordinance. The only change this ordinance makes is to allow limited sales of fireworks within Fayetteville subject to permits and regulations.

I request that prior to my reading of the ordinance at the City Council meeting, a motion be made to amend what was presented in your packet to the ordinance attached to this memo. Then, I can read the correct version so our citizens will have a clearer understanding of what is being proposed.

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

it immediately, and if such person shall refuse, neglect or fail to do so, any organized fire suppression force may summarily abate the nuisance thus constituted by controlling or extinguishing the fire, and the cost thereof may be recovered from such person by civil action.
(Code 1965, §9-13; Ord. No. 1379, 12-9-63; Code 1991, §94.03)

19-99; Ord. No. 4308, 4-17-01; Code 1991, §94.04; Ord. 5096, 12-27-07)

Cross reference(s)—Penalty, §94.99.

State law reference(s)—Public displays excepted, A.C.A. §20-22-702; Power of municipalities unaffected, A.C.A. §20-22-704; Violation of subchapter, A.C.A. §20-22-705; Possession, sale and use unlawful—Exceptions, A.C.A. §20-22-708.

94.06 Flammable And Combustible Liquids; Liquefied Petroleum Gases

94.05 Sale And Use Of Fireworks

(A) It shall be unlawful for any person to offer fireworks for sale at retail within the city.

(B) It shall be unlawful for any person to use fireworks within the city at any time except on the dates of July 3 and 4; provided that public displays pursuant to §3308 of the Arkansas Fire Prevention Code (2000 Edition) may be permitted on any date between July 1st and July 6th, inclusive.

(C) It shall be unlawful for any person to use the following fireworks at any time except at a public display pursuant to § 2002.2 of the Arkansas Fire Prevention Code (1991 Edition):

- (1) Skyrockets; and
- (2) Firecrackers, or any other exploding fireworks.

(D) The fire chief or mayor shall be authorized to declare an emergency and prohibit all use of fireworks upon a determination that such use would create a fire hazard due to dry conditions.

(E) The fire chief or mayor shall be authorized to approve an alternate date for any lawful public display which is canceled due to adverse weather conditions or pursuant to §94.04(E).

(F) It shall also be lawful for the University of Arkansas to conduct the annual "Fireworks Night" to celebrate and congratulate the Razorback Baseball Team at its last home game of the year in or near Baum Baseball Stadium. Said fireworks display shall comply with all applicable regulations and laws of the State of Arkansas.

(G) It shall be lawful for First Night Fayetteville to conduct an annual public fireworks display to celebrate New Year's if approved by the Fayetteville Fire Marshall and if in full compliance with all applicable regulations and laws of the State of Arkansas.

(Code 1965, §9-9.1; Ord. No. 1705, 10-6-69; Ord. No. 1807, 8-2-71; Ord. No. 2156, 10-21-75; Ord. No. 3359, 6-7-88; Ord. No. 3553, 6-18-91; Ord. No. 3706, §1, 6-1-93, Ord. No. 4195, 10-

(A) Adoption of NFPA 30 and NFPA 30A.

- (1) The requirements contained in this section shall be applicable to all aboveground tanks used for the outside storage and dispensing of flammable and Class II combustible liquids within the city. Such installations shall comply with the applicable requirements of National Fire Association Protection Standard (NFPA) 30-1993 and NFPA 30A-1993, except as modified herein. Refineries that comply with NFPA 30 and the applicable sections of the Standard Fire Prevention Code adopted by the city shall be exempt from this section.

(B) Definitions.

- (1) In addition to the definitions contained in NFPA 30 and NFPA 30A, the following definition shall apply:

Premises: A parcel of land, which may include one or more contiguous platted lots, occupied or intended for occupancy for a particular use or set of uses, including buildings together with accessory buildings, the yard area, and parking spaces.

(C) Outside aboveground flammable and combustible liquid tanks.

- (1) All aboveground tanks used for the outside storage of flammable and Class II combustible liquids in quantities in excess of 200 gallons shall comply with the following:

(a) Such tanks shall be fire resistant tanks as defined in NFPA 30A and shall comply with all the requirements for fire resistant tanks in NFPA 30A in addition to any applicable requirements specified herein, or

(b) Such tanks shall be installed in vaults that meet all the applicable requirements of NFPA 30A.

- (2) The fire official may impose additional

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 94 FIRE PREVENTION OF THE FAYETTEVILLE CODE BY AMENDING §94.05 SALE AND USE OF FIREWORKS AND BY ENACTING A NEW §94.09 SALE OF FIREWORKS

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 amends §94.05 by changing its title to **Use of Fireworks**, repealing subsection (A) in its entirety and relettering all the following subsections appropriately.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends Chapter 94 **Fire Prevention** of the Fayetteville Code by enacting a new §94.09 **Sale of Fireworks** as follows:

“§94.09 Sale of Fireworks

“(A) No person shall sell or distribute any firecrackers, sky rockets, bottle rockets, sparklers, roman candles, or any other explosive used for amusement purposes, or any other device or composition used to obtain visible or audible pyrotechnic display, all commonly known as fireworks, except as specifically set out herein.

(B) Fireworks which are not prohibited under state or federal law and which are considered consumer fireworks as defined under federal law and regulations (27 C.F.R. § 555.11) may be sold between June 28th and July 5th of each year, subject to the provisions set out herein. Any person desiring to sell fireworks must obtain a permit. The fee for each permit shall be \$500.00 per location. One-half of the permit fee (\$250.00) shall be placed in a revenue account of the Fayetteville Fire Department to cover the cost of fire inspections of locations where fireworks are sold. Before a permit to sell fireworks is issued, the person applying for the permit must show proof that such location will be insured by a licensed insurance company for \$1,000,000.00 premises liability. A vendor must contact the Fayetteville Fire Department and arrange for an inspection to ensure compliance with this Code and any other applicable fire code requirements, prior to the sale of fireworks.

(C) No fireworks shall be sold or stored within a permanent structure. Furthermore, no fireworks stand shall be located at any place other than one in full compliance with all provisions of law.

(D) The sale of any aerial fireworks attached to a stick shall not be permitted.

(E) Fireworks stands shall not be located within 250 feet of a fuel dispensing facility and must be set back at least 50 feet from the nearest portion of the street or highway.

(F) Fireworks shall not be sold to a person less than sixteen (16) years of age.

(G) At all locations where fireworks are sold a sign shall be conspicuously posted, visible to the public, which states, "THE DISCHARGE OF BOTTLE ROCKETS OR FIREWORKS THAT TRAVEL ON A STICK IS PROHIBITED IN THE CITY OF FAYETTEVILLE."

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

*Handed out at the 5-18-10 City Council meeting
B.1*

Police Impounds (Arrests, Parking, Violations, Etc.)	\$100.00
Police Accidents	\$125.00
Dollies	\$ 50.00
Show Up Fee	\$ 50.00
After Hours Release	\$ 50.00
Clean Up	\$ 25.00
Winch (Minimum Per Hook)	\$ 50.00
Service Call (Jumpstarts, Flats, Unlocks, Etc.)	\$ 60.00
Labor (Per Hour)	\$100.00
Oil Dry	\$ 25.00
Storage (Per Day)	\$ 30.00
Inside Storage (Climate Controlled)	\$100.00
Covered Storage	\$ 50.00
Rollback (If Necessary Or At Customers Request)	\$175.00
Tarp Or Plastic Wrap	\$ 25.00
Administrative Fee	\$ 50.00

Sales Tax Additional

Due to the recent increase of fuel costs, these fees will have to be reviewed at least every (6) six months.

Thank you for your business!

Rotation Towing List Price Ceilings

Unlawful rate regulation or lawful voluntary agreement?

About once a week I get a phone call from a towing company owner complaining that some law enforcement agency is "illegally regulating" his towing fees. Typically, the caller's company participates on a city or county rotation towing list. The towing list is governed by an ordinance or rule that includes a towing rate cap. In some instances, a maximum tow charge is being proposed for the first time. The tow operator, dissatisfied with the rate, contends that the local government is engaging in unlawful price regulation.

Most likely, it is not.

"Regulation" is a government entity imposing itself, without any direct interest, on the interactions between two private parties. Certainly, a ceiling on the fees allowed to be charged by rotation list towing companies is an example of a government entity imposing itself. But by setting a maximum towing fee for rotation list calls, is a government controlling an interaction between two private parties? On the surface, rate ceilings certainly seem to be a regulation of the financial transaction between the rotation towing company and the vehicle owner. But the courts see it differently.

In February 1999, in the case of *Cardinal Towing v. City of Bedford*, I stood before the federal court of appeals in downtown New Orleans and argued that an exclusive, single-vendor contract for tows from sites involving police investigation was an unlawful regulation of the nonconsensual towing market. In doing so, I emphasized that the vehicle owners (or their insurance companies) paid the towing bills, not the police

agency. Although it noted the "odd structure of the towing industry," the appellate court disagreed. It said:

[N]onconsensual tows do not involve any opportunity for market interaction on the part of the owner of the vehicle. The real decision is made by the party who ordered the tow, who chooses both to remove the vehicle and the party to perform the service.... This structure, while somewhat distorted by the fact a third party gets left with the bill, is in its relevant essentials an ordinary market for services. But in this oddly bifurcated market, the party requesting the tow is undeniably also acting as a consumer, and when the City requests a tow it should be treated as a consumer.

In other words, the towing firm's "customer" in a rotation towing system is the law enforcement agency, not the vehicle owner – despite the fact that the vehicle owner pays the bill. Under the reasoning of the court in *Cardinal Towing*, a government entity is not regulating financial transactions between the rotation tow companies and the vehicle owners when it implements a fee schedule; it is merely setting forth terms by which it will deal with those towing companies that voluntarily choose to participate on its tow list. Those terms include a maximum towing fee and an agreement by the towing firm, often implied, to collect the fee directly from the vehicle owner or their insurer. In the absence of

the latter requirement, the police agency would have to pay the towing charges, then seek reimbursement from the vehicle owner.

Two years after the *Cardinal Towing* decision, in *Fort Bend County Wrecker Ass'n v. Wright*, a Texas appellate judge put it this way:

[T]he Sheriff's Department is not setting prices. They are creating an invitation to contract. Those wrecker companies who do not wish to tow for the... Sheriff's Department can charge any tow fee they choose. The Sheriff's Department has merely set a fee limit as a standard to determine with whom it will contract.

By setting maximum prices for rotation tow calls, a law enforcement agency is not *forcing* its rates on any towing firm. If a rate cap is unacceptable, a tow company can simply elect not to participate on the rotation list. (If no company is willing to perform at the stated rates, the agency might be compelled to adjust its pricing schedule.)

Many *Tow Times* readers are familiar with the 1995 federal law, section 14501(c) of title 49 of the U.S. Code, that prohibits state and local governments from regulating the price charged for transportation of property by motor carriers, including towing companies. Some think that statute proscribes rotation list price controls. However, section 14501(c) does not forbid rate caps in rotation list ordinances or rules because, as explained above, such maximum fees are not price regulations in the first place. They are simply conditions that law enforcement agencies require of those towing companies that want to be on a particular rotation tow list. Section 14501(c) only prohibits government entities from regulating the price charged in consensual transactions between a towing firm and a private third-party, for example, commercial accounts, motor clubs, calls from Yellow Page ads, etc.

Welcome, Guest

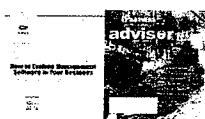
Member Sign In

Member Savings to Date:

\$31,791,008.50

May 18, 2010 11:03:41

Make sure your drivers are properly outfitted! Members can take advantage of up to a 25% discount on Aramark Uniform Services.



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Average Rates

	Light Duty Private	Light Duty Account	Light Duty Police	Heavy Duty Private	Heavy Duty Account	Heavy Duty Police
National	\$74.58	\$64.29	\$124.59	\$186.57	\$167.87	\$264.49
Midwest	\$69.31	\$60.25	\$104.53	\$173.37	\$155.56	\$230.92
Northeast	\$80.95	\$68.34	\$113.92	\$190.63	\$170.26	\$254.32
South	\$70.90	\$62.30	\$119.69	\$198.75	\$181.10	\$294.55
West	\$80.58	\$68.59	\$160.47	\$180.06	\$160.76	\$266.45

The purpose of this web page is to report towing rate statistics from across the country both nationally and regionally*. There is no intention to judge anyone's rates and we hope our members will take the

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

*Hand out at the 5/18/10
City Council mtg.*



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director
Sharon Crosson, Parking & Telecommunications Manager

FROM: **Kit Williams**, City Attorney

A handwritten signature of Kit Williams, written in black ink, with a long horizontal line extending to the right.

DATE: **May 17, 2010**

RE: **Residential Parking Permit Ordinance**

I took Don's directions and the Mayor's comments about free parking for bicycles and small scooters (which I called "high mileage scooters") and redrafted the Residential Parking Permit Ordinance (which is attached).

I added two new definitions: "Guest pass" and "High mileage scooters and bicycles" and added "Residential Parking" to the "Permit" definition to distinguish it from other types of permits.

I then added the "high mileage scooters and bicycles" language in (E)(3).

I rewrote (H) to give the Mayor the right to administer a guest pass program with a goal, but no express provisions or limitations. I think explaining what you are considering will probably be enough. The City Council can avoid the problem of deciding every minute detail and then fine tuning any program after you have experience in operating it.

No change to page one

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 72 PARKING REGULATIONS
BY ENACTING §72.18 RESIDENTIAL PARKING PERMIT PROGRAM
FOR ENTERTAINMENT DISTRICT PARKING ZONE**

WHEREAS, the Downtown Master Plan encompassing the Entertainment District Parking Zone and general city policy encourages residential uses within this Entertainment District; and

WHEREAS, the change of several large city parking lots from free parking to paid parking is likely to cause increased congestion and on-street parking problems for residents of the Entertainment District Parking Zone; and

WHEREAS, some accommodation to relieve the increased congestion and on-street parking problems should be enacted protect the quality of residential life for these residents; and

WHEREAS, a Residential Parking Permit Program for residents of the Entertainment District can ease this congestion and loss of on-street parking availability for these residents.

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 amends Chapter 72 **Parking Regulations** by enacting a new §72.18 **Residential Parking Permit Program for the Entertainment District Parking Zone** as shown below:

“72.18 Residential Parking Permit Program for the Entertainment District Parking Zone

(A) *Applicability.* This Residential Parking Permit Program shall be applicable within the Entertainment District Parking Zone as shown and described on Exhibit A attached to the enacting ordinance. This parking zone will be further divided by Dickson Street into the North Zone for included residents living north of Dickson Street and the South Zone for included residents living south of Dickson Street.

(B) *Definitions.*

'Resident' means a natural person residing within a dwelling that the resident owns, leases or rents within the Entertainment District Parking Zone.

'Registered vehicle' means a motorized, validly state licensed and insured vehicle kept at the residence owned or leased by the resident within the Entertainment District Parking Zone. The Arkansas Vehicle Registration Certificate for the vehicle should list the residence within the Entertainment District.

'Residential Parking Permit' means the currently valid permit issued by Parking Division of the Transportation Department of the City of Fayetteville which allows the resident to park the permitted resident's vehicle in an authorized on-street parking zone pursuant to the terms of this section.

'Guest pass' means the pass or authorization to park within the appropriate on-street parking zone pursuant to this section.

New

Definitions

→ 'High mileage scooter or bicycle' means bicycles, gas powered scooters not exceeding 70 cubic centimeters and electric powered bicycles and scooters.

(C) *Restricted parking periods.* From 1:00 p.m. on Sundays and 10:00 a.m. Monday through Saturday until 2:00 a.m. every day, designated on-street parking spaces within the Entertainment District Parking Zone North and South shall be restricted to properly permitted vehicles. The owner of any vehicle improperly parked during this period shall be subject to the penalties set forth in §72.99.

(D) *On-street parking restrictions for most vehicles in the Entertainment District Parking Zone.* Where designated by signs and as shown on the exhibits, only residents of the Entertainment District Parking Zone North shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone North of Dickson Street during the restricted parking period. Where designated by signs and as shown on the exhibits, only residents of the Entertainment District Parking Zone South shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone South of Dickson Street during the restricted parking period.

(E) *Special regulations for oversized vehicles, motorcycles and licensed motor scooters with over 70 cubic centimeters of displacement.* No vehicle that cannot fit within a standard on-street parking space may be permitted or parked on-street in the Entertainment District Parking Zone.

1. Moving vans serving a residence or business in the District may be specially permitted by the Transportation Department.

2. Motorcycles and motor scooters with over 70 cubic centimeters of displacement may receive a permit allowing parking only in special motorcycle/motor scooter on-street parking spaces and are prohibited from parking in standard on-street parking spaces or sidewalks.

New provision → 3. High mileage scooters and bicycles may park in specially designated parking spaces, but not in regular parking spaces or sidewalks.

(F) *Mixed use on-street parking on Spring Street.* Fifty-nine on-street parking spaces on Spring Street shall be available to the public for paid parking and to residents of the Entertainment District Parking Zone South for properly permitted vehicles free of charge.

(G) *Free public use of on-street parking.* From 2:00 a.m. every day and until 10:00 a.m. Monday through Saturday and until 1:00 p.m. on Sunday, all on-street parking spaces within the Entertainment District Parking Zone shall be free of charge and available to the public.

New language → (H) *Temporary guest passes.* An Entertainment District Parking Zone resident may request the City to issue temporary guest passes for visitors to their residence. The Mayor or designee shall administer a guest pass program with the goal of accommodating the needs of both residents and businesses within the Entertainment District Parking Zone. Use of a guest pass in a manner not authorized by the guest pass program shall be a violation of this section for the vehicle's owner.

(I) *Residential parking permits may not be loaned, transferred, sold or used except on the designated registered vehicle.* Any resident who attempts to or does loan, transfer, sell or give a residential parking permit to another person or entity, or who facilitates the use of the permit obtained for his registered vehicle on a nonregistered vehicle shall, in addition to the general penalty provisions in this chapter, immediately forfeit all permits issued to the resident and the right to apply for any future permits for three years.

(J) *Penalty.* The owner of any vehicle parked in violation of any term or requirement of this section shall be guilty of a violation and shall be subject to the penalties set forth in §72.99.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals any ordinance or code section that is inconsistent or incompatible with this ordinance to the extent of such inconsistency or incompatibility.

PASSED and **APPROVED** this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

BICYCLE-FRIENDLY COMMUNITY ACTION PLAN FOR THE CITY OF FAYETTEVILLE, ARKANSAS

Cities across the globe are managing diverse issues such as pollution, traffic congestion, traffic safety, accessibility, social inclusion, and economic growth. Increasing urbanization and sprawl is generating extra demand for quality public spaces and recreation opportunities. A renewed emphasis on security and the costs of dealing with the emerging epidemics of obesity and physical inactivity are stretching limited resources even further.

Solutions to these many challenges are equally diverse and complex. This Action Plan recognizes one policy initiative that addresses these challenges and contributes to many of the solutions necessary to improve the quality of life in cities: increasing the percentage of trips made by bicycle by making communities more bicycle-friendly.

Increasing bicycle use can:

Improve the environment by reducing the impact on residents of pollution and noise, limiting greenhouse gases, and improving the quality of public spaces.

Reduce congestion by shifting short trips (the majority of trips in cities) out of cars. This will also make Fayetteville more accessible for public transport, walking, essential car travel, emergency services, and deliveries.

Save lives by creating safer conditions for bicyclists and as a direct consequence improve the safety of all other road users. Research shows that increasing the number of bicyclists on the street improves bicycle safety.

Increase opportunities for residents of all ages to participate socially and economically in the community, regardless of income or ability. Greater choice of travel modes also increases independence, especially among seniors and children.

Boost the economy by creating a community that is an attractive destination for new residents, tourists and businesses.

Enhance recreational opportunities, especially for children, and further contribute to the quality of life in the community.

Save city funds by increasing the efficient use of public space, reducing the need for costly new road infrastructure, preventing crashes, and improving the health of the community.

Enhance public safety and security by increasing the number of "eyes on the street" and providing more options for movement in the event of emergencies, natural disasters, and major public events.

Improve the health and well being of the population by promoting routine physical activity.

Therefore we, the undersigned Fayetteville City Council Members, are committed to taking the following steps to improve conditions for bicycling and thus to realizing the significant potential benefits of bicycling in our community.

Action Plan for Bicycle Friendly Communities:

1. **TARGET STATISTIC:** Adopt a 2.5% target for commuters choosing a bicycle as the primary mode of transport by the 2020 census. (This will be almost five times the current national average of .55% and almost four times the 2000 Fayetteville figure of .69%.) We adopt a 5.0% target for commuters choosing a bicycle as the primary mode of transport by the 2030 census. (The current rate in Portland, Oregon—a Platinum-rated bicycle-friendly community—is about 6.0%). This target level provides a clear, measurable and achievable public goal that, when met, will drastically reduce the demand for more roads and automobile parking in Fayetteville. This data will be collected from the U.S. Census Bureau's American Fact Finder service, which shows the number of Fayetteville commuters over 16 years old who reported using a bicycle as their primary means of transportation to work.
2. **INFRASTRUCTURE:** Provide safe and convenient bicycle access to all parts of the community through a signed network of on and off-street facilities, low-speed streets,

and secure parking as outlined in the adopted Active Transportation Plan and Bicycle Parking Ordinance.

3. **MODEL EMPLOYER:** Make the City a model employer by encouraging bicycle use among its employees. Ensure employees awareness of the secure bicycle parking, employee showers, and city bicycle fleet available for their use. Cover the cost for up to five City staff members to participate in a Traffic Skills 101 class as offered annually by the Bicycle Coalition of the Ozarks. (Each two-day class costs \$50) This class will better equip staff to take advantage of every opportunity to create a more bicycle-friendly community. Especially encourage police personnel to take advantage of this class.
4. **EDUCATION:** Educate all road users to share the road and interact safely. Continue to provide instructional roadway and trail etiquette videos on government television, instructional signage on routes and trails, and educational guidelines to residents and visitors through the Active Transportation map brochures. Continue to host the "Share the Road" PSAs on the City website, and promote the distribution of both the PSAs and the etiquette videos.
5. **ENFORCEMENT:** Enforce traffic laws to improve the safety and comfort of all road users, with a particular focus on behaviors and attitudes that cause motor vehicle/bicycle crashes.
6. **ENCOURAGEMENT:** Develop special programs to encourage bicycle use in communities where significant segments of the population do not drive and where short trips are most common. Continue to prioritize bicycle infrastructure near schools. Continue to provide technical grant assistance to bicycle advocates working to instigate bicycle safety education into Fayetteville's public schools. Continue to support special annual cycling events such as the Joe Martin Stage Race, the Bicycle Commuter Challenge and Kid's Bicycle Safety Rodeo through police staff time, appropriate street closings, and equipment support. Provide official support of the bicycle rental program offered by the Visitor's Bureau through the City Administration members serving on the Advertising and Promotion Commission.
7. **INTERMODAL TRAVEL OPTION:** Promote intermodal travel between public transport and bicycles by linking funding for Ozark Regional Transit to progress towards adding bike racks on all busses, and also changing policy as required to facilitate prominent, accessible transit stop development. Promote potential regional mass transit connectivity through continued support for the Northwest Arkansas Alternatives Analysis Study.
8. **FEEDBACK MECHANISM:** Continue to act on resolutions from the Active Transportation Committee, and the Fayetteville Forward Transportation Group. Encourage local cyclists to identify maintenance needs, potential infrastructure improvements and bicycle policy changes through the Active Transportation Committee meetings, and through suggestion boxes located on each trail. Provide staff support to the Trail Trekkers to ensure trained observation and assistance to all trail users.

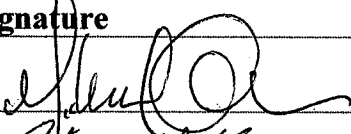
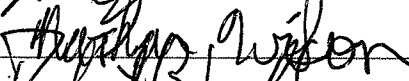
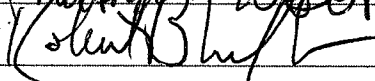
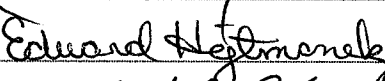
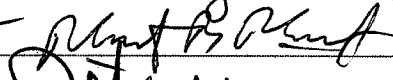
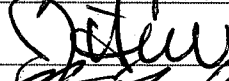
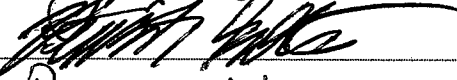
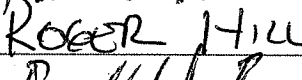
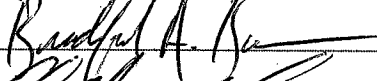
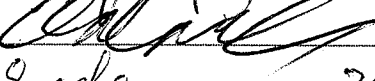
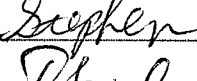
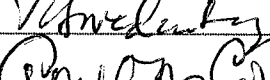
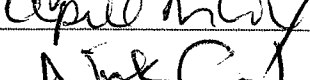
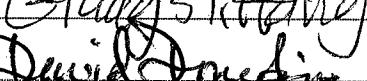
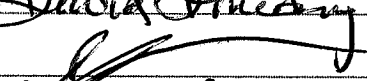
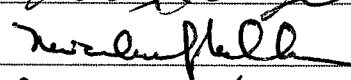
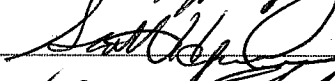
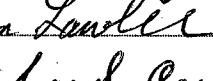
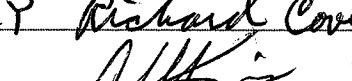
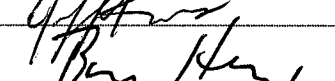
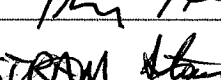
"The US Conference of Mayors calls on cities and communities to promote increased safe bicycle use for transportation and recreation..."

US Conference of Mayors, 2003.

"Every transportation agency, including DOT, has the responsibility to improve conditions and opportunities for walking and bicycling and to integrate walking and bicycling into their transportation systems. Because of the numerous individual and community benefits that walking and bicycling provide — including health, safety, environmental, transportation, and quality of life — transportation agencies are encouraged to *go beyond minimum standards* to provide safe and convenient facilities for these modes."

The US Department of Transportation Bike Policy, March 15, 2010

We, the undersigned urge the Fayetteville City Council to adopt a Bicycle-Friendly Action Plan that continues to support Active Transportation for the Economic and Physical Health of our Community. We recognize that adopting an action plan that contains the elements outlined in the attached draft will increase Fayetteville's prospects of earning national recognition as a Bicycle-Friendly Community.

	Name(please print)	Signature	Street Address & Zip
1.	Michael Cockram		803 N. Rush Dr., 72701
2.	Amanda Baneroff		524 W. Lafayette St. #5 72701
3.	Mychal Dulos		2475 Stephens Ct 72701
4.	Nathan Wilson		3274 N. Lee Ave. Fayetteville
5.	Rob Leflar		1495 Finger Rd, Fay 72701
6.	Edward Hejtmanek		1622 MARKHAM RD. FAY 72701
7.	Robert B. Richart		506 N. Willow Ave 72701
8.	JEFF HUNT		3532 N. NORTHWOOD AVE, 72704
9.	Patrick Sackett		Levee 72704
10.	Roger Hill		715 E. EDNA ST 72703
11.	Bradford A. Bowen		P.O. Box 283, Fay, AR 72702
12.	Adam Cox		815 W. Holly St Fay
13.	Stephen Coger		301 W. Spring St. Apt C 72701 72701
14.	Ted Swedensborg		425 E. Lafayette St. 72701
15.	April M. Cox		2042 Fultz Rd. 72703 72701
16.	Nick Copeland		1002 N. Valley View Dr
17.	Glady's Tiffany		105 N. Willow, Fayetteville 72701
18.	David Druding		1075 West Ave. Fay. 72701
19.	Jacob George		My Bicycle
20.	Jordan George		Bike
21.	Michael J. Adelmae		615 Rockwell Rd FV AR 72701
22.	Richard Tiffany		105 NW. Willow Fayetteville 72701
23.	Scott Hindmarsh		8009 Mark Ln ^{Fort Smith} 72903
24.	Andrew Horowitz		714 W. Douglas Fay
25.	Ben Huchard		4039 Greenwood SE 72701
26.	MIKE LLEY		20 S. HILL AVE. FAY. 72701
27.	NAN LAWLER		68 S. KESTREL, FAY, AR 72701
28.	RICHARD COVEY		68 S. KESTREL, FAY, AR 72701
29.	Jeff Kimmans		1858 Pleasant Woods Fay AR 72703
30.	Barry Herzog		114 Y. Rodgers Dr Fay, AR 72702
31.	Steve Stramel		Po Box 241, Fay AR 72702
32.	Jaclyn Pannier		209 N. Thompson Ave Fay, AR 72701
33.	Amy Graves		COV
34.	Michael C. Oden		684 S. Van Buren Ave. 72701
35.	Erin Killeen		622 Oakland St. 72701

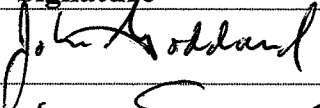
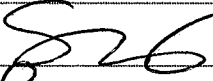
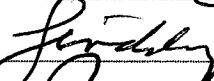
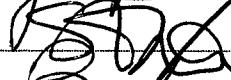
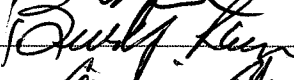
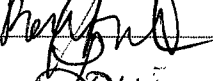
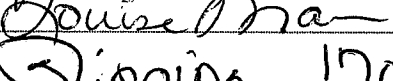
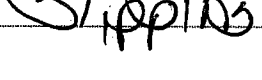
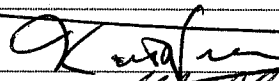
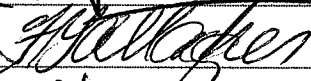
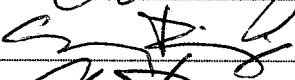
We, the undersigned urge the Fayetteville City Council to adopt a Bicycle-Friendly Action Plan that continues to support Active Transportation for the Economic and Physical Health of our Community. We recognize that adopting an action plan that contains the elements outlined in the attached draft will increase Fayetteville's prospects of earning national recognition as a Bicycle-Friendly Community.

	Name(please print)	Signature	Street Address & Zip
1.	Laura Kelly	Laura Kelly	867 S Washington 72701
2.	David George	[Signature]	233 S Virginia Ave 72701
3.	Greg Mitchell	[Signature]	307 E Sutton 72701
4.	Patricia Mitchell	Patricia C Mitchell	307 E. Sutton 72701
5.	Nicholas R Brown	Nicholas R Brown	2016 W Berry St 72701
6.	Toni Menninger	[Signature]	301 West Ave 72701
7.	Ann Mesrobian	Ann Mesrobian	19 W Pike St 72701
8.	Allison Griffin	Allison Griffin	2523 Valley Dr 72703
9.	Steven Skattebo	[Signature]	2103 Loren Cir. 72701
10.	Jordan Schanda	[Signature]	1005 S. Royal Oak Pkwy 103 72701
11.	Necia Parker-Gibson	Necia Parker-Gibson	1833 S. Cedar Fay 72701
12.	Peggy Warner	Peggy Warner	4773 Rails En Fay 72704
13.	Melissa Terry	Melissa Terry	101 N. Walnut Ave 72701
14.	Andrea Maillard	Andrea Maillard	2556 E. Kantz Dr. Apt #B-7 72703
15.	Katy Deaton	[Signature]	136 N Oakland Ave #6 72701
16.	Amanda Wunderlich	Amanda Wunderlich	2406 Blackberry Ave 72703
17.	Danville Probbornow	[Signature]	1355 N Oakland #2 72703
18.	Michelle Probbornow	[Signature]	1376 N Oakland #1 72703
19.	Sten Sesser	[Signature]	6290 E. Danite St 72701
20.	Shane L Winters	[Signature]	6290 E Danite St 72701
21.	Marie Riley	Marie Riley	525 N. Olive 72701
22.	Chung Tan	[Signature]	123 W Mountain 72701
23.	Sarah Drake	Sarah Drake	1714 Nolle 72703
24.	Marco Ferreira	[Signature]	62 Buckingham dr 72714
25.	SARROW	[Signature]	2561 STANE 72703
26.	Thom has good	[Signature]	2419 W Forestview 72704
27.	JORDAN THOMAS	[Signature]	2040 COUNTRYWAY 72703
28.	JONATHAN VOGLEN	[Signature]	855 W. FAIRVIEW ST. FAYETTEVILLE 72701
29.	Scott Pirkson	[Signature]	2140 E. Stearns St. Fayetteville, AR 72703
30.	Like Schilling	[Signature]	2455 N. Center St. Fayetteville, AR 72701
31.	Mandy Aguilar	[Signature]	1515 Greylawn Springdale AR 72764
32.	SANTA HAN SHAW	[Signature]	103 S. Ward Ave 72701
33.	DANA M SHEPHERD	[Signature]	1932 S. Fescue Ct Fayetteville, AR 72701
34.	Susannah Shinn	Susannah Shinn	119 N. Oklahoma Way, Fayetteville, AR 72701
35.	Dan Dean	DANIEL DEAN	867 S. WASHINGTON FAY, AR 72701

We, the undersigned urge the Fayetteville City Council to adopt a Bicycle-Friendly Action Plan that continues to support Active Transportation for the Economic and Physical Health of our Community. We recognize that adopting an action plan that contains the elements outlined in the attached draft will increase Fayetteville's prospects of earning national recognition as a Bicycle-Friendly Community.

	Name(please print)	Signature	Street Address & Zip
1.	John Pijanowski	<i>John Pijanowski</i>	2684 Hardy Ln 72703
2.	Janet Johnson-Mertz	<i>Janet Johnson-Mertz</i>	346 N. ARK. AVE 72701
3.	Amrita Chaturvedi	<i>Chaturvedi</i>	759 W Cleveland Apt 10 72701
4.	Carole Lee	<i>Carole</i>	920 N Lavered Ave # 824 72701
5.	Pyan Walker	<i>Pyan Walker</i>	4830 Dover St West
6.	Chris Goering	<i>Chris Goering</i>	1614 N. Fieldston 72704
7.	Kim McComas	<i>Kim McComas</i>	2506 N. Worthington Way Fayetteville
8.	CATHERINE WISSEAR	<i>Catherine Wissear</i>	1703 W EMMA Springs 72703
9.	Maggie Griffin	<i>Maggie Griffin</i>	1521 N Olympic Club Ave Fayetteville 72704
10.	Grace Kerr	<i>Grace Kerr</i>	749 E. Emerson Ln. Fayetteville AR
11.	Susan Klags	<i>Susan Klags</i>	1847 Wheeler Ave, Fay 72701
12.	Heather Kindall	<i>Heather Kindall</i>	475 Hale Road Elkins AR 72727
13.	LaVonne Kirkpatrick	<i>LaVonne Kirkpatrick</i>	20859 Lakeshore Dr. Springdale 72764
14.	Cathy Weaver	<i>Cathy Weaver</i>	1311 Tisdale Fay 72703
15.	Cecelia Thompson	<i>Cecelia Thompson</i>	FID Stone House 72701
16.	Lekey Quells	<i>Lekey Quells</i>	4388 Holiday Dr. Fayetteville 72701
17.	Carney Walker	<i>Carney Walker</i>	4388 Holiday Dr Fayetteville 72701
18.	Sung Choon Park	<i>Sung Choon Park</i>	4096 N. Cadillac Dr. #7, Fayetteville 72703
19.	Linda Eilers	<i>Linda Eilers</i>	2044 Archer Dr. Fayetteville, AR 72701
20.	VINSON CARTER	<i>Vinson Carter</i>	177 MILAS SPRINGDALE AR 72762
21.	Xanthi M. Strom	<i>Xanthi M. Strom</i>	5 Cydree 72703
22.	Charlene Joh	<i>Charlene Joh</i>	1800 Colony Way 72704
23.	Alisa Greene	<i>Alisa Greene</i>	2503 Mend Dr 72701
24.	Chelsea La Near	<i>Chelsea La Near</i>	313 Eastern 72701
25.	Aaron Empsall	<i>Aaron Empsall</i>	63 Dogwood St Fayetteville AR 72701
26.	Lauren Anderson	<i>Lauren Anderson</i>	2100 N. Leverette Fayetteville 72701
27.	Fredrick Bowles	<i>Fredrick Bowles</i>	1510 Oakcliff Trl 72703
28.	Rebecca M. Myers	<i>Rebecca M. Myers</i>	4503 SW Bradley Fayetteville 72712
29.	Andy Hoppel	<i>Andy Hoppel</i>	723 Double Springs Fay AR 72704
30.	STEPHEN MORTON	<i>Stephen Morton</i>	7237 NAPA VALLEY LN APT 104 SPRINGDALE 72764
31.	Samantha Woodcock	<i>Samantha Woodcock</i>	1699 W. Hazeltine Dr. Fay 72704
32.	Emily Gregory	<i>Emily Gregory</i>	1962 E. Peridot Pl. #4 Fay. 72701
33.	William F. McCombs	<i>William F. McCombs</i>	2506 N. Worthington Way Fay 72703
34.			
35.			

We, the undersigned urge the Fayetteville City Council to adopt a Bicycle-Friendly Action Plan that continues to support Active Transportation for the Economic and Physical Health of our Community. We recognize that adopting an action plan that contains the elements outlined in the attached draft will increase Fayetteville's prospects of earning national recognition as a Bicycle-Friendly Community.

	Name(please print)	Signature	Street Address & Zip
1.	John Goddard		2020 E COUNTRY WA 72703
2.	Sonia Davis Gutierrez		24875 St Petes Ct 30372701
3.	Lindsay Smith		340 N. Rollston Fay 72701
4.	Jerry Baker		468 S. MASHBURN AVE Fay 72701
5.	Sarah Marsh		409 16th Ave E #20 Seattle, WA 98112
6.	Beverly Fains		10 Terrill Lane Bellavista Ar 72705
7.	Cornie Edmonston		Parks & Rec
8.	Roxie Hunt		143 S Washington Fayetteville
9.	Louise Mann		629 Gray 72701
10.	Sarah Lippins		1708 NW Windham Ave G. Ville Ar.
11.			
12.	Kit Williams		288 Knorr Road Fayetteville 72712
13.	FROU GALLAGHER		5482 W PLEASANTMAN
14.	SAGE BILLIG		1000 WOOD AVE FAYETTEVILLE 72701
15.	Ben Buonaiuto		1000 Wood Ave Fayetteville 72701
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Handed out at the 5-18-10
City Council Meeting.
C.5

RESOLUTION NO. _____

A RESOLUTION TO ENCOURAGE FAYETTEVILLE CITIZENS
TO PARTICIPATE IN NATIONAL BIKE TO WORK WEEK AND
TO MAKE FAYETTEVILLE EVEN MORE BICYCLE-FRIENDLY

WHEREAS, National Bike To Work Week is May 17th through 21st and is a great way to save money, promote physical fitness and health, reduce petroleum use and your carbon footprint, and enjoy Fayetteville's growing trail system; and

WHEREAS, City of Fayetteville employees have participated in National Bike To Work Week for years and want to increase participation this year; and

WHEREAS, Fayetteville received an Honorable Mention as a "Bicycle-Friendly" city last year, but can increase its ratings with reasonable efforts and our continued efforts to expand, connect and improve our trail system.

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 encourages our citizens and especially our city employees to participate in National Bike To Work Week, May 17-21 and to chose to ride their bicycles on city trails and streets everyday rather than drive their cars for errands, visits and other short trips.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby acknowledges that Fayetteville is a "Bicycle-Friendly" city with an extensive and growing trail system that will soon stretch unbroken more than eight miles from Martin Luther King Boulevard through the Mall area to Old Missouri Road and beyond.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby adopts the Bicycle-Friendly Community Action Plan for the City of Fayetteville, Arkansas attached as Exhibit A.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

BICYCLE-FRIENDLY COMMUNITY ACTION PLAN FOR THE CITY OF FAYETTEVILLE, ARKANSAS

Cities across the globe are managing diverse issues such as pollution, traffic congestion, traffic safety, accessibility, social inclusion, and economic growth. Increasing urbanization and sprawl is generating extra demand for quality public spaces and recreation opportunities. A renewed emphasis on security and the costs of dealing with the emerging epidemics of obesity and physical inactivity are stretching limited resources even further.

Solutions to these many challenges are equally diverse and complex. This Action Plan recognizes one policy initiative that addresses these challenges and contributes to many of the solutions necessary to improve the quality of life in cities: increasing the percentage of trips made by bicycle by making communities more bicycle-friendly.

Increasing bicycle use can:

Improve the environment by reducing the impact on residents of pollution and noise, limiting greenhouse gases, and improving the quality of public spaces.

Reduce congestion by shifting short trips (the majority of trips in cities) out of cars. This will also make Fayetteville more accessible for public transport, walking, essential car travel, emergency services, and deliveries.

Save lives by creating safer conditions for bicyclists and as a direct consequence improve the safety of all other road users. Research shows that increasing the number of bicyclists on the street improves bicycle safety.

Increase opportunities for residents of all ages to participate socially and economically in the community, regardless of income or ability. Greater choice of travel modes also increases independence, especially among seniors and children.

Boost the economy by creating a community that is an attractive destination for new residents, tourists and businesses.

Enhance recreational opportunities, especially for children, and further contribute to the quality of life in the community.

Save city funds by increasing the efficient use of public space, reducing the need for costly new road infrastructure, preventing crashes, and improving the health of the community.

Enhance public safety and security by increasing the number of "eyes on the street" and providing more options for movement in the event of emergencies, natural disasters, and major public events.

Improve the health and well being of the population by promoting routine physical activity.

Therefore we, the undersigned Fayetteville City Council Members, are committed to taking the following steps to improve conditions for bicycling and thus to realizing the significant potential benefits of bicycling in our community.

Action Plan for Bicycle Friendly Communities:

1. **TARGET STATISTIC:** Adopt a 2.5% target for commuters choosing a bicycle as the primary mode of transport by the 2020 census. (This will be almost five times the current national average of .55% and almost four times the 2000 Fayetteville figure of .69%.) We adopt a 5.0% target for commuters choosing a bicycle as the primary mode of transport by the 2030 census. (The current rate in Portland, Oregon—a Platinum-rated bicycle-friendly community—is about 6.0%). This target level provides a clear, measurable and achievable public goal that, when met, will drastically reduce the demand for

more roads and automobile parking in Fayetteville. This data will be collected from the U.S. Census Bureau's American Fact Finder service, which shows the number of Fayetteville commuters over 16 years old who reported using a bicycle as their primary means of transportation to work.

2. **INFRASTRUCTURE:** Provide safe and convenient bicycle access to all parts of the community through a signed network of on and off-street facilities, low-speed streets, and secure parking as outlined in the adopted Active Transportation Plan and Bicycle Parking Ordinance.
3. **MODEL EMPLOYER:** Make the City a model employer by encouraging bicycle use among its employees. Ensure employees awareness of the secure bicycle parking, employee showers, and city bicycle fleet available for their use. Cover the cost for up to five City staff members to participate in a Traffic Skills 101 class as offered annually by the Bicycle Coalition of the Ozarks. (Each two-day class costs \$50) This class will better equip staff to take advantage of every opportunity to create a more bicycle-friendly community. Especially encourage police personnel to take advantage of this class.
4. **EDUCATION:** Educate all road users to share the road and interact safely. Continue to provide instructional roadway and trail etiquette videos on government television, instructional signage on routes and trails, and educational guidelines to residents and visitors through the Active Transportation map brochures. Continue to host the "Share the Road" PSAs on the City website, and promote the distribution of both the PSAs and the etiquette videos.
5. **ENFORCEMENT:** Enforce traffic laws to improve the safety and comfort of all road users, with a particular focus on behaviors and attitudes that cause motor vehicle/bicycle crashes.
6. **ENCOURAGEMENT:** Develop special programs to encourage bicycle use in communities where significant segments of the population do not drive and where short trips are most common. Continue to prioritize bicycle infrastructure near schools. Continue to provide technical grant assistance to bicycle advocates working to instigate bicycle safety education into Fayetteville's public schools. Continue to support special annual cycling events such as the Joe Martin Stage Race, the Bicycle Commuter Challenge and Kid's Bicycle Safety Rodeo through police staff time, appropriate street closings, and equipment support. Provide official support of the bicycle rental program offered by the Visitor's Bureau through the City Administration members serving on the Advertising and Promotion Commission.
7. **INTERMODAL TRAVEL OPTION:** Promote intermodal travel between public transport and bicycles by linking funding for Ozark Regional Transit to progress towards adding bike racks on all busses, and also changing policy as required to facilitate prominent, accessible transit stop development. Promote potential regional mass transit connectivity through continued support for the Northwest Arkansas Alternatives Analysis Study.
8. **FEEDBACK MECHANISM:** Continue to act on resolutions from the Active Transportation Committee, and the Fayetteville Forward Transportation Group. Encourage local cyclists to identify maintenance needs, potential infrastructure improvements and bicycle policy changes through the Active Transportation Committee meetings, and through suggestion boxes located on each trail. Provide staff support to the Trail Trekkers to ensure trained observation and assistance to all trail users.

"We will promote safe and environmentally friendly cycling and walking by providing safe infrastructure and networks..." World Health Organization Charter on Transport, Environment and Health, 1999.

"The US Conference of Mayors calls on cities and communities to promote increased safe bicycle use for transportation and recreation..." US Conference of Mayors, 2003.

Aldermen

Mayor Lioneld Jordan
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 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting May 18, 2010

A meeting of the Fayetteville City Council will be held on May 18, 2010 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

Agenda Session Presentations:

1. OMI Wastewater Operations Annual Report - Billy Ammons, OMI Regional Business Manager
2. Fayetteville Chamber of Commerce - Economic Development Contract Quarterly Report

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the May 4, 2010 City Council meeting minutes.

2. **2010 Community Development Block Grant (CDBG):** A resolution amending the 2010 city budget by approving a budget adjustment to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.
3. **Animal Services Donation:** A resolution amending the 2010 city budget by approving a budget adjustment to recognize animal services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.
4. **Arkansas Recreational Trails Program Grant:** A resolution expressing the willingness of the City of Fayetteville, Arkansas to utilize Federal-Aid Recreational Funds.
5. **2010 Bulletproof Vest Partnership Grant:** A resolution authorizing the Mayor to apply for a 2010 Bulletproof Vest Partnership fifty percent matching grant through the U.S. Department of Justice in the amount of \$18,200.00 for the replacement of twenty-five body armor vests for the Fayetteville Police Department.
6. **Justice Assistance Grant (JAG):** A resolution authorizing application for a 2010-2011 Justice Assistance Grant (JAG) for federal and state funding in the amount of \$167,586.00 and \$33,517.00 respectively, for the primary funding source of the 4th Judicial District Drug Task Force.
7. **2010 Federal Emergency Management Agency Assistance Grant:** A resolution authorizing application for a 2010 Federal Emergency Management Agency Assistance to firefighters grant in the amount of \$360,000.00 to purchase a specialized fire apparatus for the Fayetteville Fire Department.
8. **Arkansas Power Electronics International (APEI):** A resolution certifying local government endorsement of business to participate in the tax back program{The Consolidated Incentive Act of 2003, Ark. Code Ann. §15-4-2706(D)}
9. **Kearney National/Cooper Power:** A resolution authorizing purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approving a contract for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field from Kearney-National, Inc. through an assignment from Cooper Power Systems, LLC, in the amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.
10. **McClelland Consulting Engineers Task Order #2:** A resolution approving task order #2 with McClelland Consulting Engineers, Inc. in the amount of \$12,300.00 for development and bidding of the Airport Security Improvements Project at Fayetteville Executive Airport-Drake Field and approving a budget adjustment.

B. Unfinished Business:

1. **Amend Chapter 72 (Nonconsensual Towing):** An ordinance to amend Chapter 72 Parking Regulations of the Fayetteville Code to enact regulations for nonconsensual towing of vehicles within the Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

2. **Amend Chapter 72 (§72.18 Residential Parking Permit):** An ordinance to amend Chapter 72 Parking Regulations by enacting §72.18 Residential Parking Permit Program for Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

3. **Amend Chapter 72 (Electronic Payment Station Program):** An ordinance to amend Article III Parking Meters of Chapter 72 Parking Regulations by changing its name and adding provisions for an electronic payment station program for paid parking lots and paid on-street parking and for other reasons. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

4. **Amend Chapter 72 (§72.99 Penalties):** An ordinance to amend Article III Parking Meters and Electronic Payment Stations of Chapter 72 Parking Regulations by amending §72.99 Penalties. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

5. **Parking Program Personnel:** A resolution approving a budget adjustment in the amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone and approving the addition of 2.5 full-time equivalent positions in the Parking Management Division for the 2010 budget. *This resolution was tabled at the May 4, 2010 City Council meeting to the June 1, 2010 City Council meeting.*

C. New Business:

1. **Amend §72.02 Impoundment Procedures:** An ordinance to amend §72.02 Impoundment Procedures of the Code of Fayetteville to clarify when the Police may initiate a nonconsensual tow of a vehicle.
2. **§94.09 Sale of Fireworks:** An ordinance to amend Article I General Provisions of Chapter 94 Fire Prevention of the Fayetteville City Code by repealing §94.05 Sale and Use of Fireworks and enacting a new §94.09 Sale of Fireworks.
3. **Amend Chapter §163.14 Revocation or Change of Conditional Use:** An ordinance amending §163.14 of the Unified Development Code to permit a periodic review of conditional use permits as described herein.

4. **Amend Chapter 178 Outdoor Vendors:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 178: Outdoor Vendors to allow for the sale of locally produced arts and crafts by outdoor vendors on public sidewalks and to permit consideration of larger vending carts for specific locations as a conditional use permit by the Planning Commission.

Announcements:

1. **City Council Tour: May 17, 2010**

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

A. 2
2010 Community Development
Block Grant (CDBG)
Page 1 of 8

5/18/10
City Council Meeting Date
Agenda Items Only

Development Services
Department

Approval of budget adjustment to recognize grant revenue increase of \$55,208.00 to the 2010 Community Development Block Grant.

Budgeted Item		Budget Adjustment Attached	X
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Original Contract Number:

Mayor Date 4/26/10

Comments: Staff recommends approval of the budget adjustment.

CITY COUNCIL AGENDA MEMO

To: Mayor and Council

Thru: Jeremy Pate, Director of Development Services

From: Yolanda Fields, CS Director

Date: April 15, 2010

Subject: 2010 Community Development Block Grant (CDBG) Increase

PROPOSAL:

Fayetteville has been a Community Development Block Grant (CDBG) Entitlement city since 1975. Funding is based on a formula allocation that takes into account such factors as population, percent of low/moderate income persons, and the number of housing units. This process sets aside CDBG funds for the City of Fayetteville each year that the Community Services Division submits an annual "Action Plan" outlining the proposed use for the funds to the U.S. Department of Housing & Urban Development (HUD). If the Action Plan meets HUD requirements, an agreement is received. This agreement must be executed, returned to the HUD field office in Little Rock and then sent to Washington D.C. for the release of funds.

Grant amounts vary each year dependent upon funding levels authorized by Congress through the annual federal budget process. The estimated award for the 2010 budget was \$649,000.00 – the actual grant amount is \$704,208.00. The increase will be used to help fund the Free Health Clinic and to rehab the public facility located at 1932 Garland as noted in the grant funding detail below:

Grant Funding Detail:

Administration	\$ 84,784	
Housing Rehabilitation Program	\$354,832	
Redevelopment	\$ 56,384	
Arts Live Theatre	\$ 29,603	
Big Brothers Big Sisters of NWA	\$ 8,500	
Credit Counseling of Arkansas	\$ 11,911	
LifeSource	\$ 14,986	
NWA Free Health Center (Public Serv.)	\$ 20,000	(increase of \$20,000)
Ozark Guidance	\$ 5,000	
Transportation Program	\$ 9,000	
Fayetteville Public Library	\$ 5,200	
Life Styles	\$ 20,265	
NWAEDD	\$ 29,904	
NWA Free Health Center (Public Fac.)	\$ 19,488	(increase of \$857.00)
1932 Garland Rehab	\$ 34,351	(increase of \$34,351.00)
Grant Total	\$704,208	(Total Increase of \$55,208.00)

RECOMMENDATION:

Staff recommends approval of the budget adjustment to recognize the grant revenue increase of \$55,208.00 to the 2010 Community Development Block Grant.

BUDGET IMPACT:

Increase to CDBG Grant Revenue of \$55,208.00.

RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2010 CITY BUDGET
BY APPROVING A BUDGET ADJUSTMENT TO RECOGNIZE A
2010 COMMUNITY DEVELOPMENT BLOCK GRANT REVENUE
INCREASE OF \$55,208.00

**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 amends the 2010 city budget by approving a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A" and incorporated herein as if set out word for word, to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

RECEIVED

APR 16 2010

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

April 9, 2010

The Honorable Lioneld Jordan
Mayor of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701-6069

Dear Mayor Jordan:

I am pleased to inform you of your Fiscal Year (FY) 2010 allocations for the Office of Community Planning and Development's (CPD's) formula programs. The CPD formula programs provide funding for housing, community and economic development activities, and assistance for low- and moderate-income persons and special populations across the country. FY2010 funding for these programs was included in Public Law 111-117, signed by President Obama on December 16, 2009.

Your community has the following amounts available in FY2010:

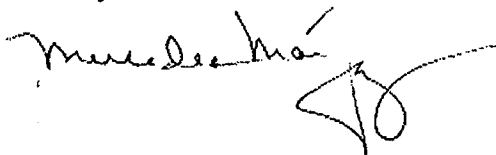
Community Development Block Grant	\$704,208
HOME Investment Partnerships	\$ 0
Housing Opportunities for Persons with AIDS	\$ 0
Emergency Shelter Grants	\$ 0

I would like to highlight two important matters for this funding cycle. First, the Department urges grantees to consider the needs of returning veterans and their families in the design and administration of these formula programs. Our fellow Americans have served our nation on the battlefields of Iraq and Afghanistan and countless other places around the globe. Many veterans are returning to our communities with wounds and injuries that may make it difficult for them to find housing or support themselves and/or their families. I ask that you consider their sacrifice and ensure that these men and women receive every appropriate consideration in the use of these funds at the local level.

Second, it is important that HUD have complete performance measurement data for its formula grant programs to report to Congress, the Office of Management and Budget, and the public at large. Grantees must report outcome indicators for all open activities in the Integrated Disbursement and Information System (IDIS) to assess their performance toward achieving their objectives and outcomes in their Consolidated Annual Performance and Evaluation Report.

We have a challenging journey ahead, but I believe with your help we can successfully meet those challenges. I look forward to working with you. If you or any member of your staff has questions, please contact your local CPD office director.

Sincerely,

A handwritten signature in black ink, appearing to read "Mercedes Márquez", followed by a large, stylized flourish or checkmark-like mark.

Mercedes Márquez
Assistant Secretary

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

A. 2
2010 Community Development
Block Grant (CDBG)
Fiscal Year 2010

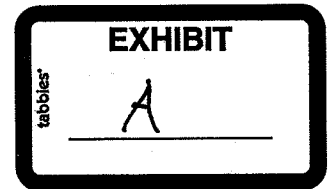
Budget Year 2010 2009	Department: Operations Division: Community Resources Program: Public Services	Date Requested 4/16/2010	Adjustment Number 0007018
---	---	--	-------------------------------------

Project or Item Added/Increased:
Increase Public Services NWA Free Health Center Account by \$20,000. Increase Public Facilities NWA Free Health Center account by \$857. Increase Public Facilities Domestic Violence Shelter account by \$34,351.

Project or Item Deleted/Reduced:
None - Revenue Increased

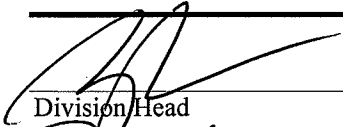
Justification of this Increase:
2010 CDBG Funding increased by \$55,208.

Justification of this Decrease:

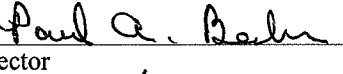
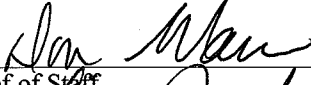
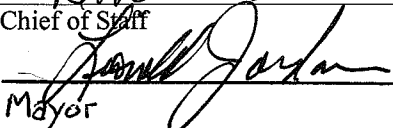


Increase Budget							
Account Name	Account Number				Amount	Project Number	
NWA Health Clinic	2180	4970	5390	14	20,000		
NWA Health Clinic	2180	4990	5390	14	857		
Domestic Violence Shelter	2180	4990	5390	27	34,351		

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Grant Funding	2180	0918	4320	00	55,208		


 Division Head 4/120/10
 Date

 Budget Director 4-23-10
 Date

 Department Director 04-22-2010
 Date

 Finance Director 4-23-2010
 Date

 Chief of Staff 4-23-10
 Date

 Mayor 4/26/10
 DATE

V.090403

Budget & Research Use Only

Type: A B C D E

Requested By Rachel

General Ledger Date _____

Posted to General Ledger _____

Initial Date

City of Fayetteville Staff Review Form

A. 3
Animal Services Donation
Page 1 of 4

City Council Agenda Items
and
Contracts, Leases or Agreements

5/18/2010

City Council Meeting Date
Agenda Items Only

Justine Middleton

Submitted By

Animal Services

Division

Community Services / *new services*

Department

Action Required:

Approval of Budget Adjustment budgeting the Donation Revenue Balance for the first quarter of 2010 in the amount of \$11,050.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
see attached	\$ -	Funds Used to Date	Program / Project Category Name
Account Number			
see attached	\$ -	Remaining Balance	General
Project Number			Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

[Signature]
Department Director

04-22-2010
Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

4-23-10
Date

Original Contract Date:

Original Contract Number:

[Signature]
Finance and Internal Services Director

4-23-2010
Date

Received in City
Clerk's Office



[Signature]
Chief of Staff

4-23-10
Date

Received in
Mayor's Office



[Signature]
Mayor

4/26/10
Date

Comments: Staff recommends approval of this budget adjustment.



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: City Council

Thru: Yolanda Field, Dir. Community Services; Jeremy Pate, Dir. Community Development

From: Justine Middleton, Animal Services Superintendent

Date: April 21, 2010

Subject: Approval of a Budget Adjust for Animal Services Division

PROPOSAL:

Animal Services would like to recognize donation revenue from the first quarter of 2010. These funds are donated by private citizens and organizations to benefit the animals cared for by Animal Services.

RECOMMENDATION:

Staff recommends approval of a budget adjustment to budget the Animal Services Donation Revenue for the first quarter of 2010.

BUDGET IMPACT:

Increase Animal Shelter Donations Program budget by \$11,050.

RESOLUTION NO. _____

A RESOLUTION AMENDING THE 2010 CITY BUDGET BY
APPROVING A BUDGET ADJUSTMENT TO RECOGNIZE
ANIMAL SERVICES DONATION REVENUE FOR THE FIRST
QUARTER OF 2010 IN THE AMOUNT OF \$11,050.00

**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 amends the 2010 city budget by approving a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A" and incorporated herein as if set out word for word, to recognize animal services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.

PASSED and **APPROVED** this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

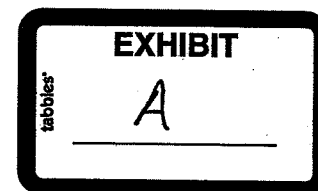
**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 3
Animal Services Donation
Page 4 of 4

Budget Year 2010 2009	Department: Police Division: Animal Services Program: Animal Shelter	Date Requested 4/20/2010	Adjustment Number
---	--	--	-------------------

Project or Item Added/Increased: Increase Donations Vet Supply by \$9,899.50 Increase Donations Spay/Neuter Vet Supply by \$1,150	Project or Item Deleted/Reduced: Recognizing donations to the Shelter
---	--

Justification of this Increase: To recogize miscelleaous donations to the Animal Shelter for expense accounts of Vet Supplies and Low Cost Spay/Neuter Vet Supplies	Justification of this Decrease: These funds are donations given from private citizens and organizations for the health and wlefare of the animals cared for at the Shelter.
--	--



Increase Budget							
Account Name	Account Number				Amount	Project Number	
Veterinary Supplies	1010	2740	5200	03	9,900	03048	1
Veterinary Supplies	1010	2740	5200	03	1,150	03049	1

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Donations - Animal Shelter	1010	0001	4808	00	9,900	03048	1
Donations - Animal Shelter Spay/Neuter	1010	0001	4808	01	1,150	03049	1

 Division Head Budget Director Department Director Finance Director Chief of Staff Mayor 4/22/10 Date 4-22-10 Date 04-22-2010 Date 4-22-2010 Date Date Date	V.090403 Budget & Research Use Only Type: A B C <u>D</u> E Requested By _____ General Ledger Date _____ Posted to General Ledger _____ Posted to Project Accounting _____ Initial Date Initial Date
--	---

City of Fayetteville Staff Review Form

A. 4
 Arkansas Recreational Trails
 Program Grant
 Page 1 of 6

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

May 18, 2010

City Council Meeting Date
 Agenda Items Only

Matt Mihalevich

Submitted By

Engineering

Division

Development Services

Department

Action Required:

Staff requests approval of a resolution expressing the willingness to utilize federal-aid recreational funds and to allow the Engineering Division to submit an application for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$150,000.00 to be used for the extension of the Lake Fayetteville Trail along the south side of the lake to Veterans Memorial Park.

\$ 30,000.00
 Cost of this request

\$ 1,011,219.00
 Category / Project Budget

Trail Development
 Program Category / Project Name

4470-9470-5814.05
 Account Number

\$ 280,552.91
 Funds Used to Date

Trail Improvements
 Program / Project Category Name

02016 / 1
 Project Number

\$ 730,666.09
 Remaining Balance

Sales Tax Capital Improvements
 Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Matt Mihalevich
 Department Director

04-29-2010
 Date

Previous Ordinance or Resolution # _____

John B. Kelley
 City Attorney

4-30-10
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Babin
 Finance and Internal Services Director

5-3-2010
 Date

Received in City
 Clerk's Office



Sam Man
 Chief of Staff

5-3-10
 Date

Received in
 Mayor's Office



Frederick Jordan
 Mayor

5/4/10
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director &
Chris Brown, City Engineer

From: Matt Mihalevich, Trails Coordinator

Date: April 30, 2010

Subject: 2010 Recreational Trails Grant Application

PROPOSAL:

Staff requests approval of a resolution expressing the willingness to utilize federal-aid recreational funds and to allow the Engineering Division to submit an application for consideration of an 80/20 matching grant through the Arkansas Recreational Trails Program for an award of up to \$150,000.00 to be used for the extension of the Lake Fayetteville Trail along the south side of the lake to Veterans Memorial Park.

RECOMMENDATION:

The Recreational Trails Grant is administered through the Arkansas Highway and Transportation Department and has been the most substantial grant program for trail funding over the years (see history below). For the 2110 recreational trail grant application, staff has selected the 1-mile long section of paved trail to complete the paved loop around Lake Fayetteville to Veterans Memorial Park. With the high number of trail users at Lake Fayetteville and the strong connectivity to recreational amenities, this trail project will complement the requirements of the grant and should be successful for funding.

Summary of the Recreational Trails Grant awards to the City of Fayetteville:

- 1997 Recreational Trails Grant (040271) - **\$20,000** - Three trailhead kiosks at Lake Fayetteville Status: Complete
- 2002 Recreational Trails Grant (040401) - **\$51,247** - Used for the Lake Fayetteville Spillway Bridge Status: Complete
- 2003 Recreational Trails Grant (040425) - **\$20,000** - Was combined with the 2002 funds into one project and used for the Lake Fayetteville Spillway Bridge Status: Complete
- 2007 Recreational Trails Grant (040507) - **\$33,600** - Project underway to replace and existing narrow trail bridge on Mud Creek Trail and bring the trail into compliance with ADA. Status: Complete
- 2008 Recreational Trails Grant (040530) - **\$60,000** - Project to extend Mud Creek Trail under and across the Old Missouri Road to connect to Sweetbriar Drive. Status: Complete
- 2009 Recreational Trails Grant (040558) - **\$116,534** - Oak Ridge Trail construction from Frisco Trail west to the University of Arkansas Campus. Status: Final Design.

BUDGET IMPACT:

If approved by City Council, the grant application will be submitted for a total amount of \$180,000.00. The terms of this grant require a local sponsor or municipality to provide funding for 20% of the total project cost, or \$30,000.00. Upon receipt of an official Notice to Proceed from the Arkansas Highway and Transportation Department, the project would be reimbursable at a rate of 80%, which for this project would be a total reimbursement of \$150,000.00, if fully funded by the grant. Sufficient funding not to exceed \$30,000.00 for the City's portion of this project will need to be budgeted for 2011 in the Trail Development Project, within the Sales Tax Capital Improvement Fund.

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF FAYETTEVILLE, ARKANSAS TO UTILIZE FEDERAL-AID RECREATIONAL FUNDS.

WHEREAS, the City of Fayetteville understands Federal-Aid Recreational Trails Funds are available at 80% federal participation and 20% local match to develop or improve the Lake Fayetteville Trail on the south side of the lake to Veterans Memorial Park; and,

WHEREAS, the City of Fayetteville understands that Federal-Aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and,

WHEREAS, the City of Fayetteville understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed; and,

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the applicant.

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

Section 1. That the City of Fayetteville, Arkansas, will participate in accordance with its designated responsibility, including maintenance of this project.

Section 2. That the Mayor is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

Section 3. That the City Council of the City of Fayetteville, Arkansas, pledges its full support and hereby authorizes the City of Fayetteville to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF

insert sponsor's name

TO UTILIZE FEDERAL-AID RECREATIONALS FUNDS

WHEREAS *(insert sponsor's name)* understands Federal-aid Recreational Trails Funds are available at 80% federal participation and 20% local match to develop or improve **(insert project name)**, and

WHEREAS *(insert sponsor's name)* understands that Federal-aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS *(insert sponsor's name)* understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed, and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant.

NOW, THEREFORE, BE IT RESOLVED BY *(insert sponsor's governing body)* **THAT:**

SECTION I: *(insert sponsor's name)* will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION II: *(insert title of sponsor's CEO/CAO)* is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION III: *(insert sponsor's governing body)* pledges its full support and hereby authorizes the *(insert sponsor's name)* to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this _____ day of _____, 2010.

Signed: _____
(Insert sponsor's CEO/CAO)

ATTEST: _____

(SEAL)

City of Fayetteville Staff Review Form

A. 5
2010 Bulletproof Vest Partnership Grant
Page 1 of 4

**City Council Agenda Items
and
Contracts, Leases or Agreements**

May 18, 2010

City Council Meeting Date
Agenda Items Only

G. Tabor
Submitted By

Patrol
Division

Police
Department

Action Required:

Approval of a 50% matching grant application to the 2010 Bulletproof Vest Partnership Program in the amount of \$18,200 for the replacement of twenty-five (25) body armor vests for our police officers.

\$ 18,200.00
Cost of this request

\$ 18,200.00
Category / Project Budget

Bulletproof Vest Partnership Program
Program Category / Project Name

1010-2920-5302.00
Account Number

\$ -
Funds Used to Date

Grant
Program / Project Category Name

07042-2010
Project Number

\$ 18,200.00
Remaining Balance

General
Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director

4-22-10
Date

Previous Ordinance or Resolution # _____

[Signature]
City Attorney

4-22-10
Date

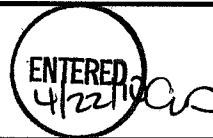
Original Contract Date: _____

Original Contract Number: _____

Paul A. Butler
Finance and Internal Services Director

4-22-2010
Date

Received in City
Clerk's Office



[Signature]
Chief of Staff

4-23-10
Date

Received in
Mayor's Office



[Signature]
Mayor

4/26/10
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and Members of the City Council

From: Greg Tabor, Chief of Police 

Date: April 21, 2010

Subject: Fayetteville Police Department Donations

PROPOSAL:

The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998, is a unique U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement. Since 1998, the Fayetteville Police Department has obtained grant funding in excess of \$79,000 for the purchase of body armor vests through this partnership. The BVP program provides an important component to the continuing health and welfare of our Police Officers. Each body armor vest has a guaranteed life of five years. All state-of-the-art body armor is custom made to the exact specifications of the wearer to ensure all officers have our required level of protection and can take up to ten weeks for delivery. This grant funding by BVP will provide reimbursement of 50% (or \$9,100) of the City's expenses for the replacement of twenty-five (25) body armor vests for our police officers. All Fayetteville Police Officers have state-of-the-art body armor provided to them through grant and City funding.

RECOMMENDATION:

Staff recommends approval of a 50% matching grant application by the 2010 Bulletproof Vest Partnership (BVP) Program in the amount of \$18,200 for the replacement of twenty-five (25) body armor vests for our police officers

BUDGET IMPACT:

The City must match 50% (or \$9,100) of the total project cost of \$18,200. Currently, matching funds are budgeted in the Specialized Police Equipment project to meet this matching requirement.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A 2010 BULLETPROOF VEST PARTNERSHIP FIFTY PERCENT MATCHING GRANT THROUGH THE U.S. DEPARTMENT OF JUSTICE IN THE AMOUNT OF \$18,200.00 FOR THE REPLACEMENT OF TWENTY-FIVE BODY ARMOR VESTS FOR THE FAYETTEVILLE POLICE DEPARTMENT

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 apply for a 2010 Bulletproof Vest Partnership Fifty Percent (50%) Matching Grant through the U.S. Department of Justice in the amount of \$18,200.00 for replacement of twenty-five (25) body armor vests for the Fayetteville Police Department.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**1. Registration**

- 1.1 [Contact Information](#)
1.2 [Change Password](#)

2. Application

- 2.1 [Pre Application](#)
2.2 [Manage Application](#)
2.3 [Review Application](#)
2.4 [Submit Application](#)

3. Receipts

- 3.1 [Manage Receipts](#)
3.2 [Receipt Reports](#)

4. Payment

- 4.1 [Bank Information](#)
4.2 [Print Bank Form](#)
4.3 [Request Payment](#)
4.4 [Payment History](#)

5. Status

- 5.1 [Current Status](#)
5.2 [LEA Status](#)
5.3 [Application History](#)



BVP HELP DESK
(Toll-Free 1-877-758-3787)
(Toll 1-301-595-4595)

Section Application > Submit Application > Submit Application for Funding for BVP Approval

OMB #1121-0235
(Expires: 10/31/2006)

PLEASE NOTE: Applications for funding may be submitted for the purchase of any armor that meets the established NIJ ballistic or stab standards ordered **on or after April 1, 2010**. Once the open application period closes, funding levels will be established and all applicants will be notified.

Jurisdiction:	FAYETTEVILLE CITY	
Status (Last Submission Date):	Open Application (Not Submitted)	
Jurisdiction's Vest Replacement Cycle:	5 Years	Update Pre Application
Unspent BVP Funds Remaining	\$29,683.63	
Unspent BVP Funds Obligated for Vest Purchases:	\$29,683.63	
Emergency Replacement Needs:	0	

Submit Application for Funding for BVP Approval

Name	Quantity	Application for Funding Extended Cost	Tax, S&H*	Total Cost
FAYETTEVILLE CITY	25	\$16,659.00	\$1,541.00	\$18,200.00
Grand Totals	25	\$16,659.00	\$1,541.00	\$18,200.00
Requested BVP Portion of Total Cost, up to:				\$9,100.00

* Total Taxes, Shipping and Handling Cost for each Application

Customer Satisfaction Survey

Please indicate your customer satisfaction regarding how easy this form was to understand and use:

Select Difficulty Level

Please indicate your customer experience using the Internet to conduct business:

Select Experience Level

CERTIFICATION**Chief Executive Certification:**

As chief executive officer (or authorized designee) of this jurisdiction, my submission of this Application for Funding Form under the Bulletproof Vest Partnership Grant Act, represents my legally binding acceptance of the terms set forth on this form; and the program's statutory and programmatic requirements, restrictions, and conditions, including the following:

In the case of any equipment or products that may be authorized to be purchased with financial assistance provided, using funds appropriated or otherwise made available by this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American - made equipment and products.

The recipient acknowledges that this grant is for Federal preparedness assistance. Therefore, the recipient agrees that it will implement and comply with the National Incident Management System (NIMS) as required by Homeland Security Presidential Directive 5 (HSPD-5). <http://www.fema.gov/nims>. The recipient acknowledges that the Secretary of Homeland Security will develop standards and guidelines for determining whether a State or local entity has adopted the NIMS. Finally, the recipient further acknowledges that the Secretary of Homeland Security will determine compliance with the NIMS and the recipient agrees to abide by the Secretary's decision on compliance.

The applicant will give the sponsoring agency or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers or documents related to this application and any subsequent payments received as a result of this application.

I acknowledge and accept the Chief Executive Certification.

Funding Limits Certification:

If the submission of this application for funding is in conjunction with transactions for the purchase of vests, I understand and agree to abide by the following:

I understand that all funding awards will be subject to the availability of funds and I acknowledge that there is no guaranteed level of funding associated with the submission of this application to the BVP program.

I agree to meet my financial and contractual obligations associated with any purchase transactions, regardless of the amount of funding received through this application.

I acknowledge and accept the Funding Limits Certification.

I certify to the best of my knowledge and belief, all information in this application is true and correct.

Signature:

As the jurisdiction's chief executive officer (or designee), authorized to submit this application, I hereby enter my full name in the space provided below:

[Submit Application for BVP Approval](#)

City of Fayetteville Staff Review Form

C. Willie

A. 6
Justice Assistance Grant (JAG)
Page 1 of 12City Council Agenda Items
and
Contracts, Leases or Agreements

5/18/2010

City Council Meeting Date
Agenda Items OnlyGreg Tabor
Submitted ByDrug Enforcement
DivisionPolice
Department

Action Required:

Approval of a grant application to the Justice Assistance Grant program for federal and state funding of the 4th Judicial District Drug Task Force in the amount of \$167,586 and \$33,517, respectively.

\$ 511,082.00
Cost of this request

\$ 471,016.00

Drug Enforcement
Program Category / Project Name2930-2960
Account Number\$ 151,626.27
Funds Used to DateDrug Enforcement
Program / Project Category Name

Project Number

\$ 319,389.73
Remaining BalanceDrug Enforcement
Fund NameBudgeted Item ☐Budget Adjustment Attached ☐Tracy Besley
Department Director4-30-2010
Date

Previous Ordinance or Resolution #

City Attorney

5-5-10
Date

Original Contract Date:

Original Contract Number:

Paul A. Becker
Finance and Internal Services Director5-5-2010
DateReceived in City
Clerk's Office

Chief of Staff

5-5-10
DateReceived in
Mayor's Office

Mayor

5/5/10
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and Members of the City Council

From: Greg Tabor, Chief of Police

Date: April 30, 2010

Subject: 4th Judicial District Durg Task Force Grant Application to Justice Assistance Grant Program

PROPOSAL:

Since 1991, the 4th Judicial Drug Task Force (JDTF) has been receiving grant funding from the Justice Assistance Grant (JAG) Program. Through this grant, federal and state funds are made available for the implementation and continuation of drug enforcement operations across our State. Other than local matching funds, this grant is the 4th JDTF's primary funding source. Active law enforcement participants of the 4th JDTF are Fayetteville, Springdale, Washington County, and Prairie Grove representing nine (9) rural agencies.

The 4th JDTF's grant application for the 2010-2011 JAG grant period (July 2010 thru June 2011) is \$167,586 in federal funding and \$33,517 in state funding with local funding in the amount of \$309,979 for a total grant period budget of \$511,082. The JAG defines required local matching funds based on a percentage split of 75/15/10 in awarded federal and state funds plus local funds. To receive the federal and state portion of the Justice Assistance Grant, we must commit to a match of \$22,345. However, participating agencies must provide additional funds in the amount of \$287,634 to maintain the same level of effectiveness for the Drug Enforcement program.

RECOMMENDATION:

Staff recommends approval of the 2010-2011 Justice Assistance Grant application for federal and state funding in the amount of \$164,306 and \$32,818, respectively, for the 4th Judicial Drug Task.

BUDGET IMPACT:

If awarded these grant funds, Fayetteville's portion of the budgeted local match will be \$212,204 plus projected covert buy money needs in the amount of \$20,000 for a total local requirement of \$232,204. The Police Department has a 2010 budget of \$233,000 in its' Transfer to Drug Enforcement account to meet our local match requirements in 2010, and will request 2011 funds at the same level during the budget approval process.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING APPLICATION FOR A 2010-2011 JUSTICE ASSISTANCE GRANT (JAG) FOR FEDERAL AND STATE FUNDING IN THE AMOUNT OF \$167,586.00 AND \$33,517.00 RESPECTIVELY, FOR THE PRIMARY FUNDING SOURCE OF THE 4TH JUDICIAL DISTRICT DRUG TASK FORCE

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 application for a 2010-2011 Justice Assistance Grant (JAG) for federal and state funding in the amount of \$167,586.00 and \$33,517.00 respectively, for the primary funding source of the 4th Judicial District Drug Task Force.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

**ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
ATTACHMENT D: 2010 APPLICATION BUDGET**

A. 6
Justice Assistance Grant (JAG)
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APPLICANT ORGANIZATION City of Fayetteville

PROJECT TITLE 4th Judicial District Drug Task Force

Budget Item	FEDERAL FUNDS	STATE MATCH	LOCAL MATCH	PROJECT TOTAL	Narrative Explanation of Budget Item
A. SALARY: List all positions for which funding is sought, include positions to be used as match. Include the number of hours worked per week, the salary rate, as well as a brief description of the job duties to be performed by each position. Grant funds and/or grant matching funds may not be used for CONFIDENTIAL FUNDS, unless the Authorized Official certifies that the DTF will comply with the Department of Justice regulations concerning Confidential Funds.					
Brad Renfro, Supervisor	\$ 23,797	\$ 4,754	\$ 39,249	\$ 67,800	
Cameron Crafton, Investigator	\$ 19,909	\$ 3,978	\$ 31,002	\$ 54,889	
Jason French, Investigator	\$ 16,713	\$ 3,339	\$ 43,046	\$ 63,098	
Cara Murdoch, Secretary	\$ -	\$ -	\$ 35,239	\$ 35,239	
TOTAL SALARY	\$ 60,419	\$ 12,071	\$ 148,536	\$ 221,026	
B. MANDATED BENEFITS: Mandated Benefits include FICA, Worker's Compensation and State Unemployment. FICA is calculated at 7.65% of total salary. Worker's Compensation and State Unemployment rates are determined by the respective agencies.					
Medicare @ 1.45% X Officers salary	\$ 876	\$ 175	\$ 1,643	\$ 2,694	
FICA @ 7.65% X Secretary salary	\$ -	\$ -	\$ 2,696	\$ 2,696	
Worker's Compensation for all Positions @ 3.36 %	\$ 2,030	\$ 406	\$ 4,990	\$ 7,426	
TOTAL MANDATED BENEFITS	\$ 2,906	\$ 581	\$ 9,329	\$ 12,816	
C. EMPLOYER BENEFITS: Include all other benefits offered to employee through group policies held by the applicant (i.e.: health insurance, retirement, etc.). Payments made directly to employees are not an allowable cost.					
Health insurance for Officers	\$ 3,683	\$ 733	\$ 3,726	\$ 8,142	
Health insurance for Civilian	\$ -	\$ -	\$ 2,714	\$ 2,714	
Life Insurance	\$ -	\$ -	\$ 538	\$ 538	
LTD Insurance	\$ -	\$ -	\$ 575	\$ 575	
ADD Insurance	\$ -	\$ -	\$ 36	\$ 36	
Retirement for Officers (15.84%)	\$ 9,570	\$ 1,912	\$ 17,947	\$ 29,429	
Retirement for Civilian (12%)	\$ -	\$ -	\$ 4,229	\$ 4,229	
TOTAL EMPLOYER BENEFITS	\$ 13,253	\$ 2,645	\$ 29,765	\$ 45,663	
D. MAINTENANCE AND OPERATIONS: Include items essential to the effective implementation of activities identified within this proposal (i.e. staff travel, telephone, office rental, office supplies, car lease (car lease not to exceed \$600.00 per month) etc.).					
Alarm Service	\$ 417	\$ 83	\$ 384	\$ 884	
Bank Service Charges	\$ -	\$ -	\$ 130	\$ 130	
Cell Phones	\$ 2,352	\$ 227	\$ 1,409	\$ 3,988	
Cleaning Service	\$ -	\$ -	\$ 1,420	\$ 1,420	
Copier Expense	\$ 293	\$ 59	\$ 616	\$ 968	
Drug Screening	\$ -	\$ -	\$ 392	\$ 392	
Equipment Maintenance	\$ -	\$ -	\$ 1,500	\$ 1,500	
Evidence Collection Supplies	\$ 475	\$ 131	\$ 894	\$ 1,500	
Fuel	\$ 4,265	\$ 832	\$ 3,763	\$ 8,860	

C00000APPLICATION DEADLINE: MAY 22, 2010 AT 4:30 P.M.
Applications received after the 4:30 deadline will not be considered000000

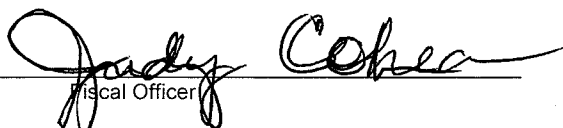
**ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
ATTACHMENT D: 2010 APPLICATION BUDGET**

A. 6
Justice Assistance Grant (JAG)
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Office Phones	\$ -	\$ -	\$ 1,656	\$ 1,656	
Office Supplies	\$ 234	\$ 47	\$ 1,219	\$ 1,500	
Pagers	\$ 824	\$ 165	\$ 110	\$ 1,099	
Personal Liability Insurance	\$ 384	\$ 77	\$ 539	\$ 1,000	
Postage	\$ 47	\$ 9	\$ 94	\$ 150	
Surveillance Equipment Service Fees	\$ 1,226	\$ 245	\$ 164	\$ 1,635	
Vehicle Insurance	\$ 506	\$ 101	\$ 4,963	\$ 5,570	
Vehicle Maintenance	\$ 2,675	\$ 534	\$ 4,291	\$ 7,500	
TOTAL MAINTENANCE AND OPERATIONS	\$ 13,698	\$ 2,510	\$ 23,544	\$ 39,752	
E. PROFESSIONAL/CONTRACT SERVICES: Include any professional service needed to ensure success of the project. For each consultant enter the name, service to be provided and hourly fee. Estimate time worked on the project. If Contract Services is used for PERSONNEL - use the Personnel/Salary Category, but list that they are Contract Services.					
Washington County Sheriff's Office	\$ 26,651	\$ 5,485	\$ 28,652	\$ 60,788	
Springdale Police Department	\$ 28,516	\$ 5,767	\$ 35,117	\$ 69,400	
Prairie Grove Police Department	\$ 20,996	\$ 4,185	\$ 34,006	\$ 59,187	
TOTAL PROFESSIONAL/CONTRACT SERVICES	\$ 76,163	\$ 15,437	\$ 97,775	\$ 189,375	
F. TRAVEL/TRAINING: Itemize travel expenses of project personnel by purpose. Training for personnel (IN STATE ONLY). OUT OF STATE TRAVEL/TRAINING MUST BE APPROVED BY IGS/COMMITTEE.					
Drug Investigator Training	\$ 1,147	\$ 273	\$ 1,030	\$ 2,450	
TOTAL TRAVEL/TRAINING	\$ 1,147	\$ 273	\$ 1,030	\$ 2,450	
G. EQUIPMENT: List non-expendable items to be purchased. Non-expendable equipment is tangible property having a useful life of more than two years and an acquisition cost of \$500.00 or more per item.					
Item Name	\$ -	\$ -	\$ -	\$ -	
TOTAL EQUIPMENT COST	\$ -	\$ -	\$ -	\$ -	
H. TOTAL PROJECT BUDGET	\$167,586.00	\$33,517.00	\$309,979.00	\$511,082.00	

2010 - 2011 Budget (Federal and State):

Maximum Eligibility Amount (FEDERAL) for 2010 - 2011:	\$167,586.00
Total State Match Requirement for 2010 - 2011:	\$33,517.20
Total Local Match Requirement 2010 - 2011:	\$22,344.80

Authorized Official

Fiscal Officer

Date
4/30/10
Date



ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
ATTACHMENT H - CERTIFIED ASSURANCES

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Justice Assistance Grant (JAG)
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CERTIFIED ASSURANCES

1. The applicant assures that federal funds made available under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program will not be used to supplant state and local funds, but will be used to increase the amount of funds that would, in the absence of federal funds, be made available for the activities of this project.
2. The applicant assures that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Bureau of Justice Assistance and the Department of Finance and Administration shall prescribe shall be provided to assure fiscal control, proper management, and effective disbursement of funds received under this subaward;
3. The applicant assures that it will maintain an appropriate grant administration system to ensure that all terms, conditions and specifications of the grant, including these assurances, are met.
4. The applicant assures that it shall maintain such data and information and submit such reports in such form, at such times, and containing such data and information as the as the Bureau of Justice Assistance and the Department of Finance and Administration may require;
5. The applicant agrees to use the grant and matching funds only for the purposes stated in this application. Additionally, the applicant agrees that any grant and matching funds approved for personnel for this project will be based on the percent of time the personnel actually devote to the project.
6. The applicant assures that at the end of each federal fiscal year that the project is in force, and at the end of the project period, it will submit a performance report to the Department of Finance and Administration in a manner to be prescribed;
7. The applicant certifies that the program contained in this application meets all the requirements, and that all the information is correct, and that the applicant will comply with all provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended and all other applicable federal and state laws;
8. The applicant assures that before any budgetary or programmatic amendment is made to an approved program, it will submit such an amendment to the Department of Finance and Administration for review;
9. The applicant assures that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Justice Programs, Office of Civil Rights Compliance (OCRC) and the Arkansas Department of Finance and Administration, Office of Intergovernmental Services;
10. The applicant assures that if it is required to formulate an Equal Employment Opportunity Program (EEOP) in accordance with 28 CFR 42.301, et. seq., it should submit a certification to the state that it has a current EEOP on file which meets the requirements therein;
11. The applicant assures that it will comply with the provisions of the Department of Finance and Administration's "Drug Law Enforcement Subgrant Procedures and Financial Management Guidelines";
12. The applicant assures that it will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part II, Applicability of Office of Management and Budget Circulars; Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; and Part 63, Floodplain Management and Wetland Protection Procedures;

INITIAL

13. The applicant assures that in addition to all other audit requirements, it will allow the Division of Legislative Audit or any other independent or internal auditors of the Department of Finance and Administration to have access to the applicant's records and financial statements;
- (A) as may be necessary for the Department of Finance and Administration to comply with the 1996 Single Audit Act Amendments and Office of Management and Budget (OMB) Circular A-133, and other rules and/or regulations governing financial accounting and auditing guidelines, principles, and procedures; and
- (B) as may be requested by the Department of Finance and Administration to comply with any State or local government rules and/or regulations;
14. The applicant assures that it will fully participate in the compilation of statistical information as required by state agencies, i.e., providing complete finger print arrest information;
15. The applicant assures that both federal and matching funds used for this project will be used exclusively to support defined JAG Program activities, and will not be used to support any general purpose law enforcement or other activity maintained by the applicant;
16. The applicant assures that if the grant funds are used to support a Task Force, the Task Force Board of Directors or 'Control Group' will hold regularly scheduled meetings at least monthly, and will provide the State Drug Director with copies of the agenda and minutes of each meeting;
17. The applicant assures that if grant funds are used to support a Task Force, the Task Force Administrator and the Board of Directors will develop and/or maintain a detailed policy and procedures manual for the guidance of task force operations.
18. The applicant assures that all proposals for out of state travel for conference and training will be submitted to the Arkansas Law Enforcement Committee for approval prior to any expense being incurred.
19. The applicant agrees to comply with the with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act if applicable. The applicant also agrees to accept full responsibility for any compensatory time allowance or overtime pay obligations for persons employed within the project not funded by the grant.
20. The applicant agrees that no officer or employee of its agency shall be involved in a decision that affects the applicant during the time of employment with the knowledge that there is an opportunity to further their interest as set forth in the Department of Justice, Office of Justice Programs Financial Guide.

CERTIFICATION

I hereby certify that the applicant will comply with the above certifications and certify that the program proposed in this application meets all the requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; that all the information presented is correct; and the application will comply with the provisions of the Act and all other federal laws, regulations, and guidelines and applicable state laws and regulations.

(Signature of Contracting Official)

(Date)

Lioneld Jordan
(Typed Name)

Mayor
(Title)

(Signature of Fiscal Officer)

4/30/10
(Date)

Judy Cohea
(Typed Name)

Fiscal Officer
(Title)

**EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
SPECIAL CONDITIONS**

1. The subrecipient agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide. This information is available at <http://www.ojp.usdoj.gov/financialguide/>.
2. The subrecipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the subrecipient is in compliance.
3. The subrecipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, as further described in the current edition of the OJP Financial Guide, Chapter 19.
4. Subrecipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of OJP.
5. The subgrantee agrees to assist the Bureau of Justice Assistance (BJA) in complying with the National Environmental Policy Act (NEPA) and other related federal environmental impact analyses requirements in the use of these grant funds, either directly by the grantee or by a subgrantee. Accordingly, prior to obligating grant funds, the grantee agrees to first determine if any of the following activities will be related to the use of the grant funds.

The subgrantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year flood plain;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and,
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments.

Application of This Special Condition to Subgrantee's Existing Programs or Activities: For any of the subgrantees' existing programs or activities that will be funded by these grant funds, the subgrantee, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

6. This special condition facilitates compliance with the provisions of the National Environmental Policy Act (NEPA) relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories [hereinafter, "meth lab operations"]. No monies from this award may be obligated to support meth lab operations unless the grantee implements this special condition.

The Office of Justice Programs (OJP), in consultation with the Bureau of Justice Assistance, the Drug Enforcement Administration, and the Office for Community Oriented Policing Services, prepared a Program-level Environmental Assessment (Assessment) governing meth lab operations. The Assessment describes the adverse environmental, health, and safety impacts likely to be encountered by law enforcement agencies as they implement specific actions under their methamphetamine laboratory operations. Consistent with the Assessment, the following terms and conditions shall apply to the subgrantee for any OJP funded meth lab operations:

A. The subgrantee shall ensure compliance with federal, state, and local environmental, health, and safety laws and regulations applicable to meth lab operations, to include the disposal of the chemicals, equipment, and wastes resulting from those operations.

B. The grantee shall have a Mitigation Plan in place that identifies and documents the processes and points of accountability within its state. This plan will be used to ensure that the adverse environmental, health, and safety impacts delineated in the Assessment are mitigated in a manner consistent with the requirements of this condition.

C. The subgrantee shall comply with the following nine mitigation measures identified in the Assessment and whose implementation is addressed in the grantee's Mitigation Plan. These mitigation measures must be included as special conditions in all subgrants: (See Part II of this special condition)

7.
 1. Provide medical screening of personnel assigned or to be assigned by the grantee to the seizure or closure of clandestine methamphetamine laboratories;
 2. Provide Occupational Safety and Health Administration (OSHA) required initial and refresher training for law enforcement officials and all other personnel assigned to either the seizure or closure of clandestine methamphetamine laboratories;
 3. As determined by their specified duties, equip the personnel with OSHA required protective wear and other required safety equipment;
 4. Assign properly trained personnel to prepare a comprehensive contamination report on each seized/closed laboratory;
 5. Utilize qualified disposal personnel to remove all chemicals and associated glassware, equipment, and contaminated materials and wastes from the site(s) of each seized laboratory;
 6. Dispose of the chemicals, equipment, and contaminated materials and wastes at properly licensed disposal facilities or, when allowable, at properly licensed recycling facilities;
 7. Monitor the transport, disposal, and recycling components of subparagraphs numbered 5. and 6. immediately above in order to ensure proper compliance;
 8. Have in place and implement a written agreement with the responsible state environmental agency. This agreement must provide that the responsible state environmental agency agrees to (i) timely evaluate the environmental condition at and around the site of a closed clandestine laboratory and (ii) coordinate with the responsible party, property owner, or others to ensure that any residual contamination is remediated, if determined necessary by the state environmental agency and in accordance with existing state and federal requirements; and
 9. Have in place and implement a written agreement with the responsible state or local service agencies to properly respond to any minor, as defined by state law, at the site. This agreement must ensure immediate response by qualified personnel who can (i) respond to the potential health needs of any minor at the site; (ii) take that minor into protective custody unless the minor is criminally involved in the meth lab activities or is subject to arrest for other criminal violations; (iii) ensure immediate medical testing for methamphetamine toxicity; and (iv) arrange for any follow-up medical tests, examinations, or health care made necessary as a result of methamphetamine toxicity.
8. The subrecipient agrees to submit to DFA for review and approval any curricula, training materials, or any other written materials that will be published, including web-based materials and web site content, through funds from this subgrant at least thirty (30) working days prior to the targeted dissemination date.
9. To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdiction, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the grantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.
10. To support public safety and justice information sharing, OJP requires the grantee to use the Global Justice Data Model specifications and guidelines for this particular grant. Grantee shall publish and make available without restriction all schemas (extensions, constraint, proxy) generated as a result of this grant to the component registry as specified in the guidelines. This information is available at www.it.ojp.gov/gjxdm.

Initial

11. The subrecipient is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund may not be used to pay debts incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate and expend the grant funds in the trust fund (including any interest earned) during the period of the grant. Grant funds (including any interest earned) not expended by the end of the grant period must be returned to DFA no later than 60 days after the end of the grant period, along with the final submission of the Financial Status Report .
12. The subgrantee agrees to comply with all reporting, data collection and evaluation requirements, as prescribed by the BJA in the program guidance for the Justice Assistance Grant (JAG). Compliance with these requirements will be monitored by BJA.
13. The subrecipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per 28 C.F.R. 23.20(g). Should any violation of 28 C.F.R. Part 23 occur, the subrecipient may be fined as per 42 U.S.C. 3789g(c)-(d). Subrecipient may not satisfy such a fine with federal funds.
14. The subrecipient agrees that all income generated as a direct result of this award shall be deemed program income. All program income must be accounted for and used for the purposes under the conditions applicable for the use of funds under this award, including the effective edition of the OJP Financial Guide and, as applicable, either (1) 28 C.F.R. part 66 or (2) 28 C.F.R part 70 and OMB Circular A-110. Further, the use of program income must be shown on the quarterly Financial Status Report.
15. The subrecipient agrees to ensure that the State Information Technology Point of Contact receives written notification regarding any information technology project funded by this grant during the obligation and expenditure period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these grant funds. In addition, the recipient agrees to maintain an administrative file documenting the meeting of this requirement. For a list of State Information Technology Points of Contact, go to <http://www.ojp.usdoj.gov/funding/funding.htm> .
16. Subgrantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
17. Subgrantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Subgrantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.
18. Subrecipient agrees that funds provided under this award may not be used to operate a "pay-to-stay" program in any local jail. Subrecipient further agrees not to subaward funds to local jails which operate "pay-to-stay" programs.
19. "Applicants must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, subrecipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov."

ACCEPTANCE OF SPECIAL CONDITIONS

Signature

Date



OMB APPROVAL NO. 1121-0140
EXPIRES 06/30/2009

STANDARD ASSURANCES

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); *see* Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. If a governmental entity—
 - a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
 - b) it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

Signature _____
Date _____

City of Fayetteville Staff Review Form

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2010 Federal Emergency
Management Agency Assistance Grant
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City Council Agenda Items
and
Contracts, Leases or Agreements

May 18, 2010

City Council Meeting Date
Agenda Items Only

Chief David Dayringer
Submitted By

Fire Operations
Division

Fire
Department

Action Required:

Request approval to apply for 2010 Assistance to Firefighters Grant in the amount of \$450,000. The actual amount of the grant would be \$360,000 (80%) with a City match of \$90,000 (20%). Funding would be for the purchase of a heavy rescue truck with on-board breathing air compressor, cascade air system and rescue equipment for swift water rescue, high angle rescue, confined space rescue and collapse rescue.

\$90,000

Cost of this request

\$ 100,000.00

Category / Project Budget

Fire Dept Act 833 / 46 / Misc Revenue

Program Category / Project Name

1010.3020.5911.00

Account Number

\$ -

Funds Used to Date

Revenues

Program / Project Category Name

03047 / 1

Project Number

\$ 100,000.00

Remaining Balance

General Fund

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Paul C. Dayringer
Department Director

4-30-10
Date

Previous Ordinance or Resolution #

Jim Kelly
City Attorney

5-5-10
Date

Original Contract Date:

Original Contract Number:

Paula A. Buh
Finance and Internal Services Director

5-5-2010
Date

Received in City
Clerk's Office



Jim Miller
Chief of Staff

5-5-10
Date

Received in
Mayor's Office

Donnell Jordan
Mayor

5/5/10
Date

Comments:



www.accessfayetteville.org

A. 7

2010 Federal Emergency
Management Agency Assistance Grant
Page 2 of 4

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: David Dayringer, Fire Chief

Date: April 30, 2010

Subject: Request for matching funds for federal grant.

PROPOSAL: The City of Fayetteville Fire Department has identified an opportunity to apply for an Assistance to Firefighters Grant (AFG) through the Federal Emergency Management Agency (FEMA) in order to purchase a Specialized Fire Apparatus. The cost of a Heavy Rescue Unit is approximately \$450,000. The amount of the grant will be \$360,000 (80%) with a City match of \$90,000 (20%). The truck will carry Rescue Team equipment and lighting for swift water rescue, high angle rescue, confined space rescue and collapse rescue. In addition, the truck will house a mobile cascade air system, and an on-board breathing air compressor.

RECOMMENDATION: Staff recommends approval of the matching funds for a 2010 Assistance to Firefighters Grant in the amount of \$450,000. The actual amount of the grant would be \$360,000 (80%) with a City match of \$90,000 (20%). Funding would be for the purchase of a heavy rescue truck with on-board breathing air compressor, cascade air system and rescue equipment.

BUDGET IMPACT: The Fire Department has identified Act 833 / 46 / Misc Revenue from account 1010.3020.5911.00 as the budget source for the matching funds. The Act 833 revenue comes in quarterly and will accumulate until the first quarter of 2011 when the grant awards should be announced.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING APPLICATION FOR A 2010
FEDERAL EMERGENCY MANAGEMENT AGENCY ASSISTANCE
TO FIREFIGHTERS GRANT IN THE AMOUNT OF \$360,000.00 TO
PURCHASE A SPECIALIZED FIRE APPARATUS FOR THE
FAYETTEVILLE FIRE DEPARTMENT

**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 application for a 2010 Federal Emergency Management Agency Assistance to
Firefighters Grant in the amount of \$360,000.00 to purchase a specialized fire apparatus
for the Fayetteville Fire Department.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

City of Fayetteville Staff Review Form

A. 8
 Arkansas Power Electronics
 International (APEI)
 Page 1 of 22

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/18/2010

City Council Meeting Date
 Agenda Items Only

Don Marr, Chief of Staff

Submitted By

Mayor's Administration

Division

Chief of Staff

Department

Action Required:

Resolution of the City of Fayetteville Certifying Local Government Endorsement of Arkansas Power Electronics International (APEI) to participate in the Tax Bac Program (As Authorized by Section 15-4-2706 (d) of the Consolidated Incentive Action of 2003) and authorizing the Department of Finance and Administration to refund local sales and use taxes to Arkansas Power Electronics International.

\$ -
 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 ☐

Don Marr
 Department Director

4-28-10
 Date

Previous Ordinance or Resolution #

John Kelly
 City Attorney

4-29-10
 Date

Original Contract Date:

Original Contract Number:

Paul a. Buh
 Finance and Internal Services Director

5-3-2010
 Date

Received in City
 Clerk's Office



King

Don Marr
 Chief of Staff

5-3-10
 Date

Received in
 Mayor's Office



Frederick Jordan
 Mayor

5/4/10
 Date

Comments:



City Council Meeting Date:
August 18, 2009

City Council Agenda Memo

To: Mayor and Members of the City Council
From: Don Marr, Chief of Staff
Thru: Mayor Jordan
Date: 4/30/2010
Subject: Tax Back Program Request

Recommendation:

The City Staff and Administration recommend on behalf of the Mayor's office that the City Council of the City of Fayetteville, AR pass a resolution in support of Arkansas Power Electronics International (APEI) request to participate in the State of Arkansas Tax Back Program.

Background:

The City of Fayetteville, AR was contacted by Steve Clark, CEO & President of the Fayetteville Chamber of Commerce, Chung Tan the City of Fayetteville's Economic Development Representative Contractor through the Fayetteville Chamber of Commerce Economic Development contract, and Sharmila Mounce Business Operations Manager of APEI contacted the City of Fayetteville seeking the City's endorsement of APEI to Participate in the Tax Back Program of the Consolidated Incentive Act of 2003.

APEI is a start up company which began out of the University of Arkansas and currently employs 25 employees. APEI has chosen the Enterprise building in the Arkansas Research and Technology Park as its site to locate its manufacturing facility. Manufacturing is set to begin this fall (2010). Total investments could be up to 1.68 million dollars which include retrofitting the facility with a clean room, machinery and equipment. With this expansion, APEI intends to create 25 new jobs over the next 5 years with an average annual salary of \$85,000 a year.

Support of this resolution will allow APEI to carry out its expansion program and spur economic development for the City of Fayetteville. APEI meets the City's goal of attracting clean technology companies to the community.

Budget Impact:

We believe the budget impact for the City of Fayetteville will be neutral. We believe the job growth will spur new sales tax growth from new employee spending and the sales tax we are forgoing was Sales Tax that we could possibly not have at all if the expansion did not occur or the expansion was done by the company relocating to another municipality.

RESOLUTION No. _____

A RESOLUTION CERTIFYING LOCAL GOVERNMENT ENDORSEMENT OF BUSINESS TO PARTICIPATE IN THE TAX BACK PROGRAM {THE CONSOLIDATED INCENTIVE ACT OF 2003, ARK. CODE ANN. § 15-4-2706(d)}

WHEREAS, the local government must endorse a business to participate in the Tax Back Program and benefit from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, Ark. Code Ann. § 15-4-2706(d); and

WHEREAS, the local government must authorize the refund of local sales and use tax as provided in the Consolidated Incentive Act of 2003; and

WHEREAS, said endorsement must be made on specific form available from the Arkansas Department of Economic Development; and

WHEREAS, Arkansas Power Electronics International, Inc., located at 535 W. Research Center Blvd., Fayetteville, Arkansas has sought to participate in the program and more specifically has requested benefits accruing from expansion of its manufacturing complex; and

WHEREAS, Arkansas Power Electronics International, Inc. has agreed to furnish the local government all necessary information for compliance.

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 endorses Arkansas Power Electronics International, Inc. for benefits from the refunds/tax credits as provided in the Consolidated Incentive Act of 2003, Ark. Code Ann. § 15-4-2706(d).

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Department of Finance and Administration to refund local sales and use taxes to Arkansas Power Electronics International, Inc.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



April 28, 2010

Mayor Lioneld Jordan
Fayetteville City Council
113 West Mountain
Fayetteville, AR 72701

Dear Mayor Jordan and Council Aldermen:

I strongly support the application submitted by Arkansas Power Electronics International (APEI) to participate in the state of Arkansas Tax Back Program. APEI is a start-up company coming out of the University of Arkansas and it currently has 25 employees. After careful consideration on possible sites to locate its manufacturing facility, APEI has chosen the Enterprise Building in the Arkansas Research and Technology Park. Manufacturing is set to begin this summer of 2010.

The manufacturing facility will start with a 7,850 sq. foot print. Total investments could be up to \$1.68 million which include retrofitting the facility with a clean room, machinery and equipment. With this expansion, APEI intends to create 25 new jobs over the next 5 years with an average annual salary of \$85,000 a year.

An approval to pass the resolution to refund sales and use taxes to APEI for its purchases by the Fayetteville Council will allow APEI to carry out its expansion program and spur economic development in the City. APEI meets the City's goal of attracting clean technology companies in the community. It will also be offering employment opportunities to the community and contributes towards building a high tech workforce in Fayetteville. APEI has the capabilities and expertise to successfully operate and manage the company. Further, I anticipate APEI to grow and expand exponentially in the future. APEI will become a valuable City's asset that we can leverage when we attract new and similar companies into the City.

This project supports your and the Council's economic development goals of improving the standard of living for all Fayetteville and northwest Arkansas residents through access to higher paying jobs and this project contributes to the sustainability of a manufacturer base in Fayetteville. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Clark". The signature is fluid and cursive, with the first name "Steve" and last name "Clark" clearly distinguishable.

Steve Clark,
President/CEO

Arkansas Power Electronics International, Inc.

535 W. Research Center Blvd., Suite 209 • Fayetteville, AR 72701 • Phone: (479) 443-5759 • Fax: (575)-7446



*We are a small business dedicated to
developing and marketing the state-of-the-
art technology in power electronics systems,
electronic motor drives, and power
packaging.*

*APEI Overview
April 2010*

Sharmila Mounce, M.S.E.E.
Business Operations Manager
Email: smounce@apei.net

APEI Confidential

APEI, Inc.
535 W. Research Center Blvd.
Fayetteville, AR 72701
Phone: (479)-443-5759
Website: www.apei.net

Arkansas Power Electronics International, Inc.
535 W. Research Center Blvd., Suite 209 • Fayetteville, AR 72701 • Phone: (479) 443-5759 • Fax: (575)-7446



APEI, Inc.

Long Term Goal

To become a leading global supplier of high performance SiC power modules and SiC power electronics systems.

Arkansas Power Electronics International, Inc.

535 W. Research Center Blvd., Suite 209 • Fayetteville, AR 72701 • Phone: (479) 443-5759 • Fax: (575)-7446



APEI, Inc. Company Information

- **Founded in 1997**
 - Dr. Alexander Lostetter majority owner, remainder employee owned
 - Presently shifting from R&D technology development into high performance manufacturing
 - Located in the Arkansas Technology Research Park, UA Campus, Fayetteville, AR
- **Employees**
 - ~ 25 employees
 - CEO, Dr. Alexander Lostetter Business Operations Manager, Mrs. Sharmila Mounce
 - CTO, Dr. Marcelo Schupbach Director of Manufacturing, Jared Hornberger
- **Revenues** *(past year 3M)*
 - ~\$6.0 million projected for 2010
 - Completely “boot-strapped” — \$0 in debt, no external capital investments to date
- **Intellectual Property**
 - ~ 12 patents awarded, pending, and under filing
 - Multiple industrial trade secrets
 - ~ 150 international publications by company employees

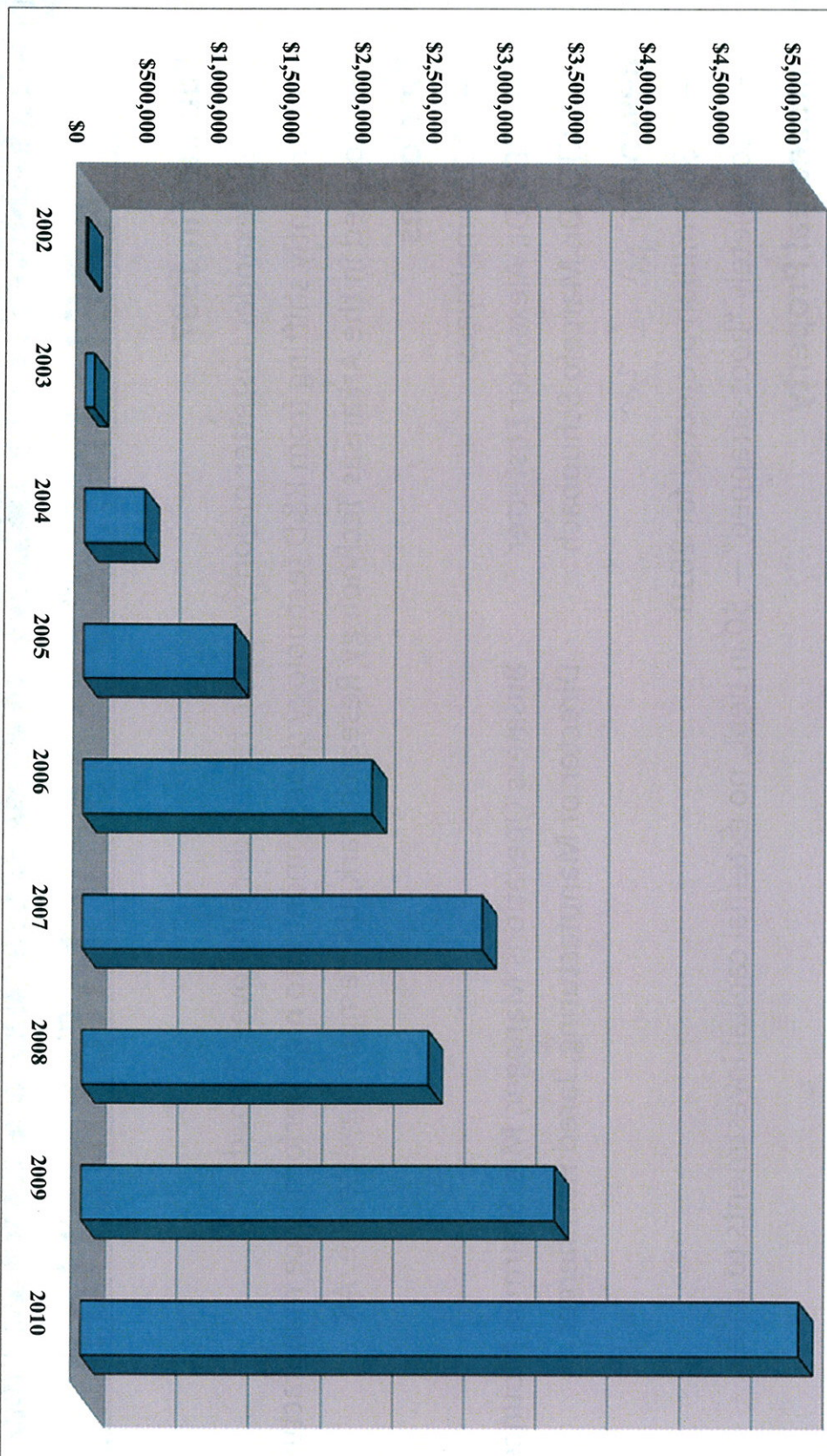
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APEI, Inc. Revenues

Revenues for 2002 - 2010

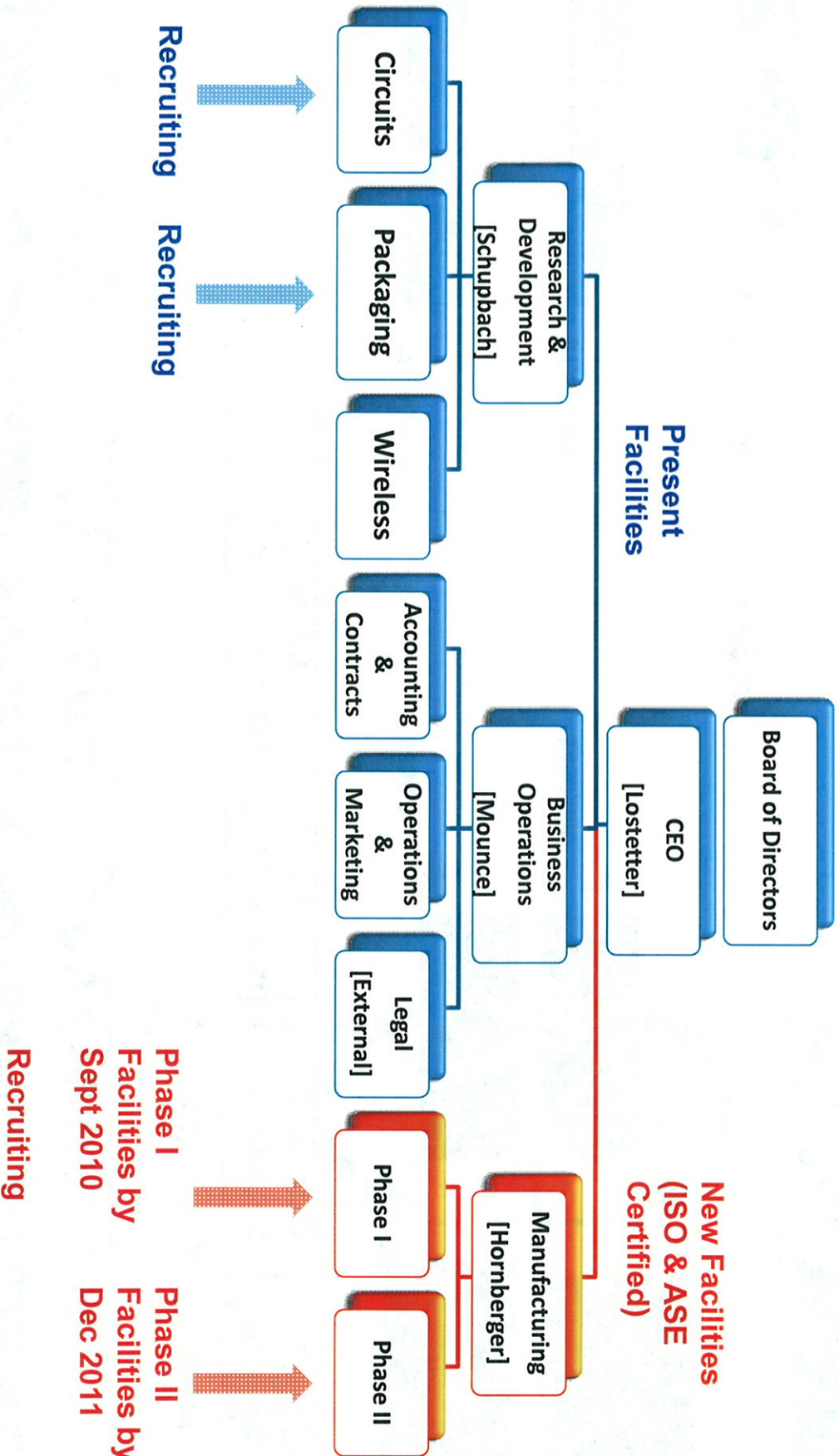


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APEI, Inc. Organization

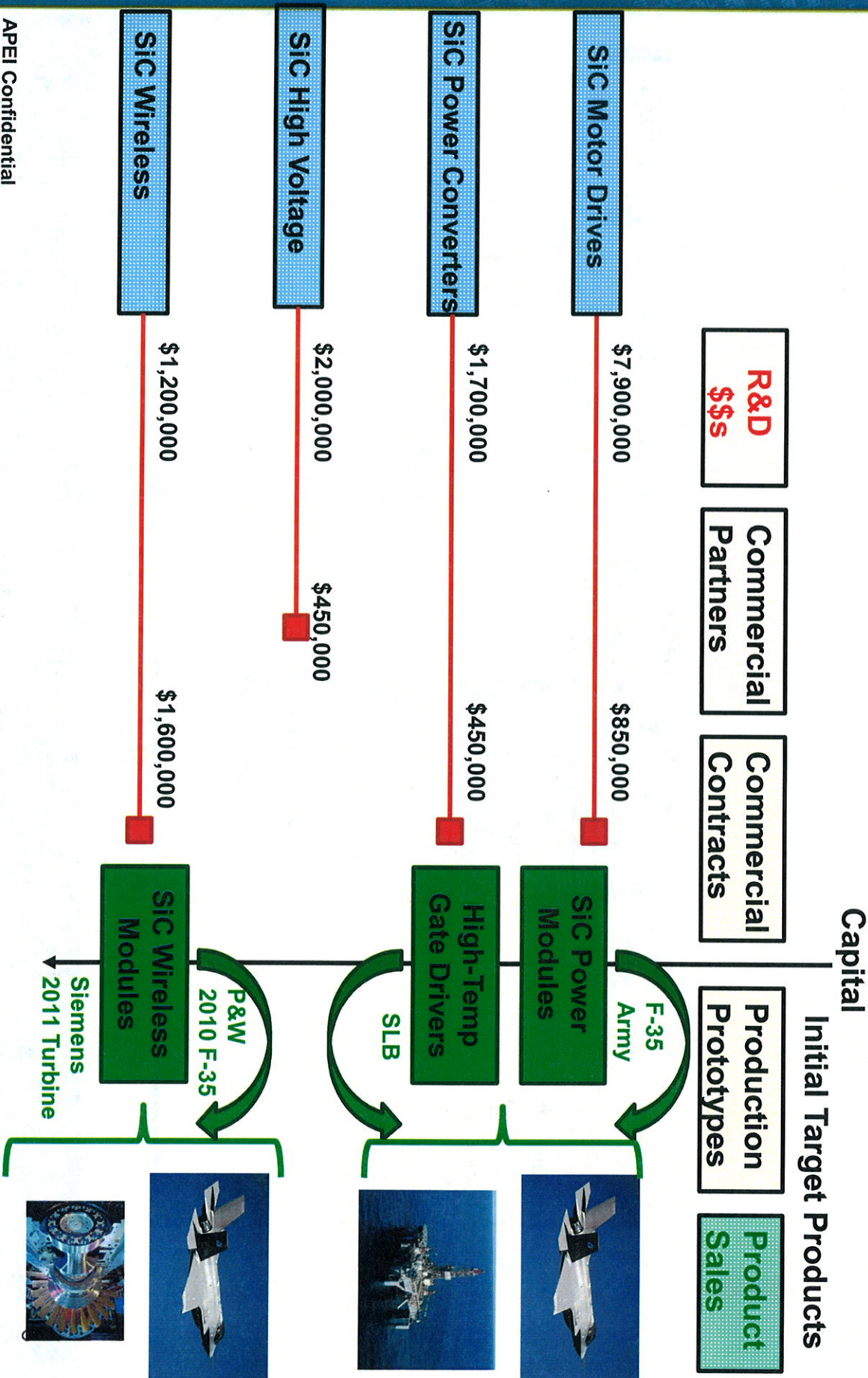


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APEI, Inc.'s Product Development

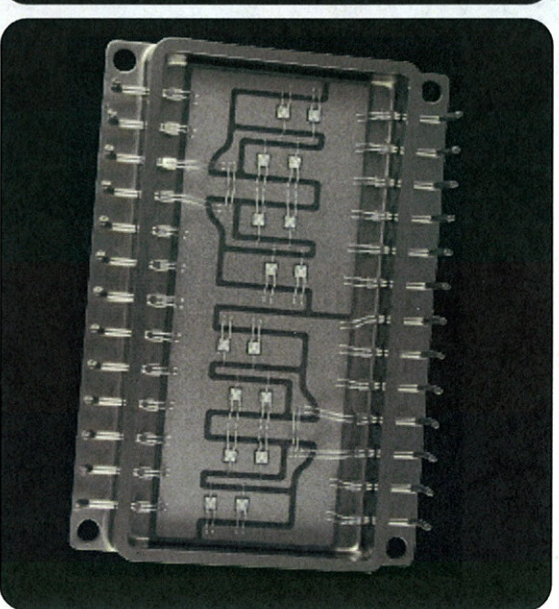
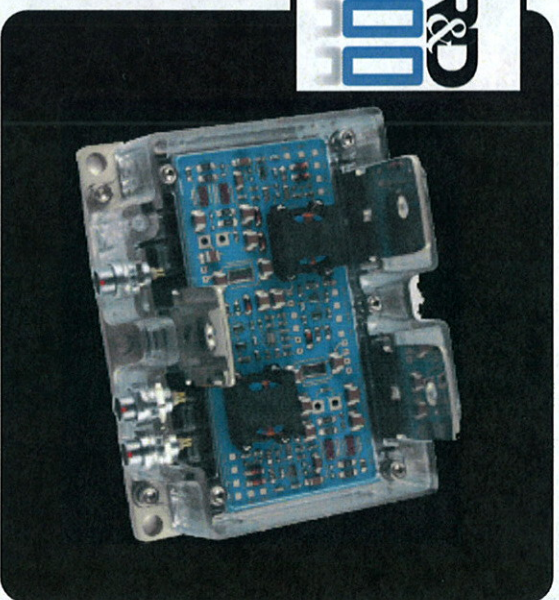


Arkansas Power Electronics International, Inc.

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APEI, Inc.'s SiC Power Modules



Features

- High current capability (>200 Amps)
- General use power module
- High temperature (250 °C)

Features

- Integrated gate driver
- High current capability (>150 Amps)
- Designed for traction application
- High temperature (250 °C)

Features

- Hermetically sealed
- High current capability (up to 200 Amps)
- Designed for aerospace
- High temperature (300 °C)
- High reliability

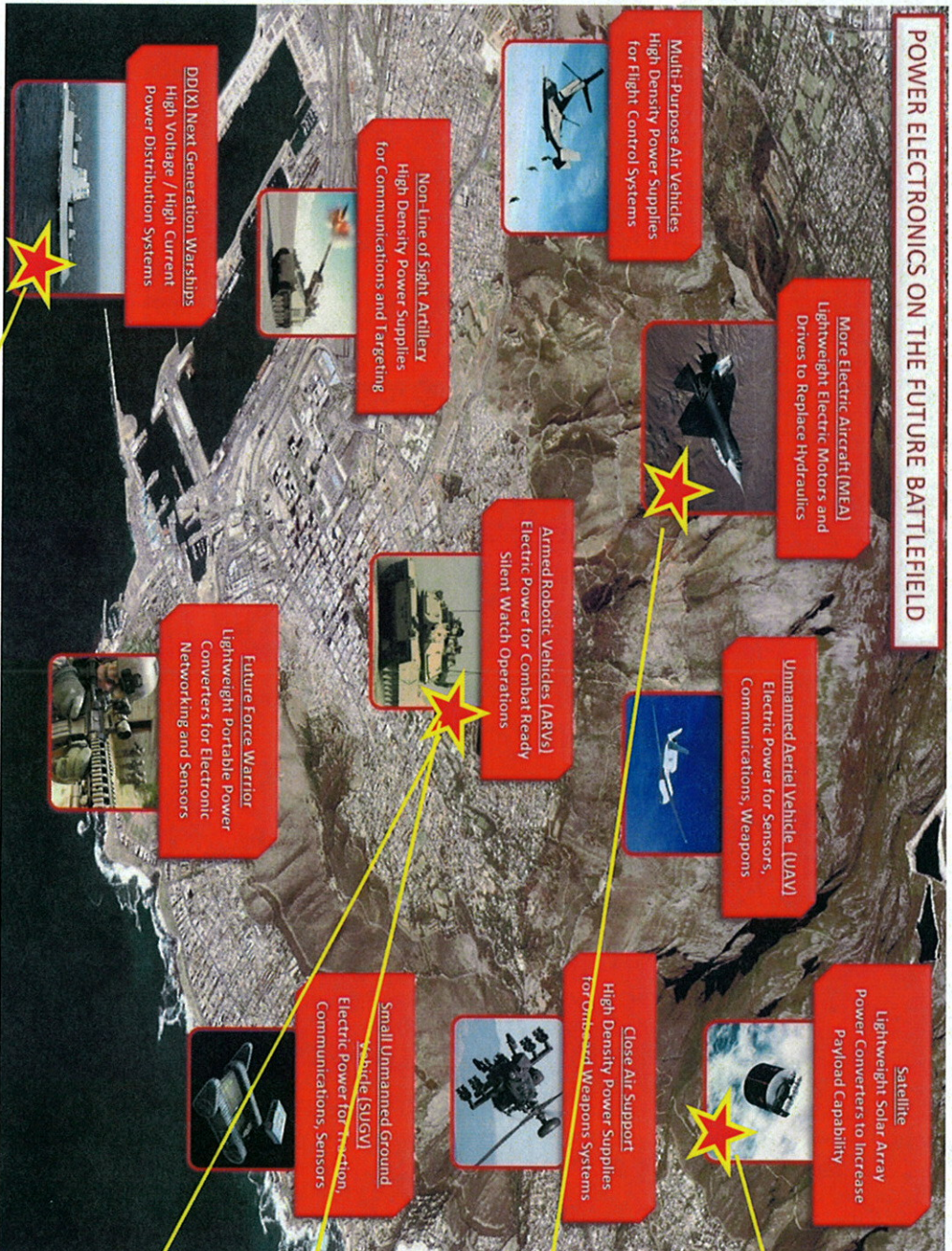
Key differentiator: APEI, Inc. is planning to implement many devices.

Arkansas Power Electronics International, Inc.

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Application and Benefit to Military



APEI, Inc. Major
Program Contracts

Missile Defense

\$1M FY 2010-11

F-35 JSF

Air Force Phase III

\$10M FY 2010-13

F-35 JSF

Air Force

\$1M Wireless

Army TARDEC

SAIC

\$2.1M FY 2010-11

Army Research Labs

\$1M FY 2010-11

APEI Confidential

Navy Radar Systems
\$1M FY 2009-11

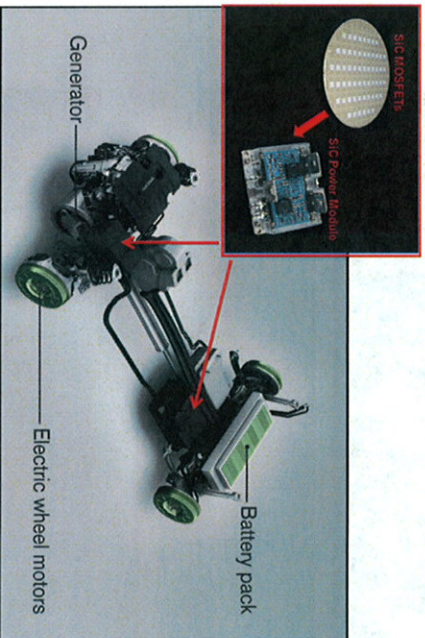
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Other Applications

Commercial Hybrid and Electric Vehicles



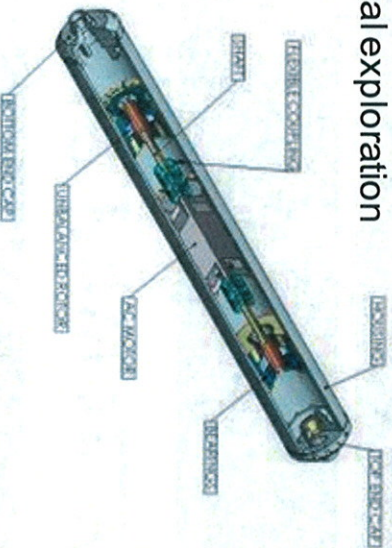
Renewable Energy

- High efficiency power conversion
- Reduction of electrical losses by 90%
- Lightweight inverters for remote locations



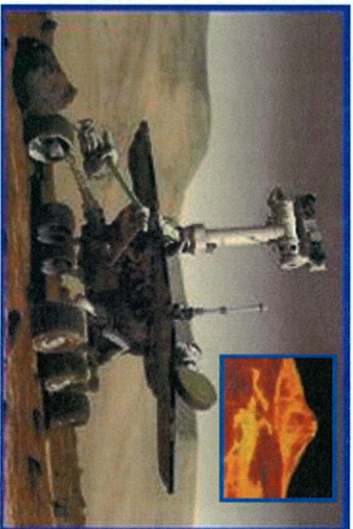
Down-Hole Instruments

- High-temperature electronics for deep earth
- Petroleum exploration
- Geothermal exploration



NASA

- Extreme environment exploration (Venus lander)
- Lightweight reliable power supplies for satellites & spacecraft



Aerospace

- Reduced launch costs due to lightweight
- Application to the more-electric commercial airliners



Revision 10/16/06

Arkansas Power Electronics International, Inc.

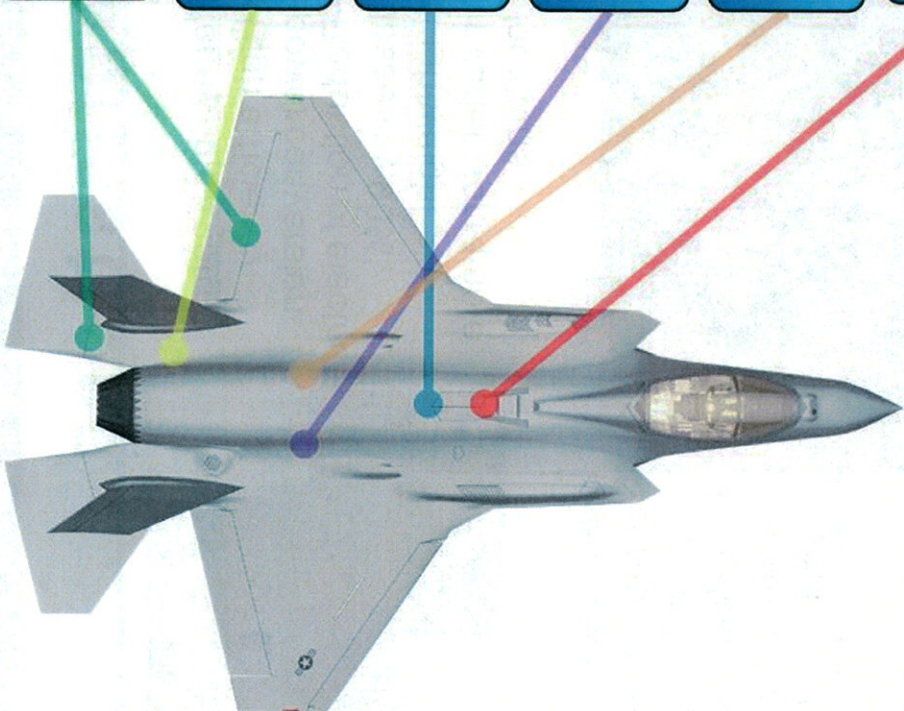
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Sic Power Modules for F-35 JSF



More Electric Aircraft (MEA) such as the F-35 could find Sic power electronics usage in or with:



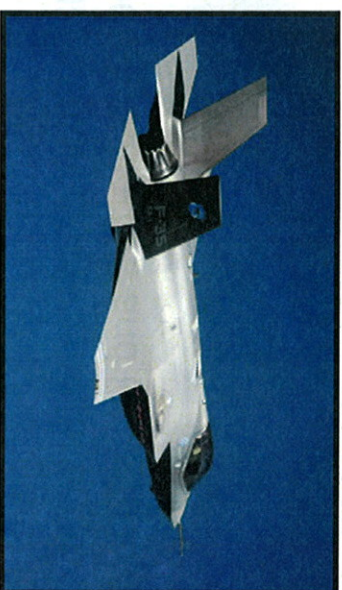
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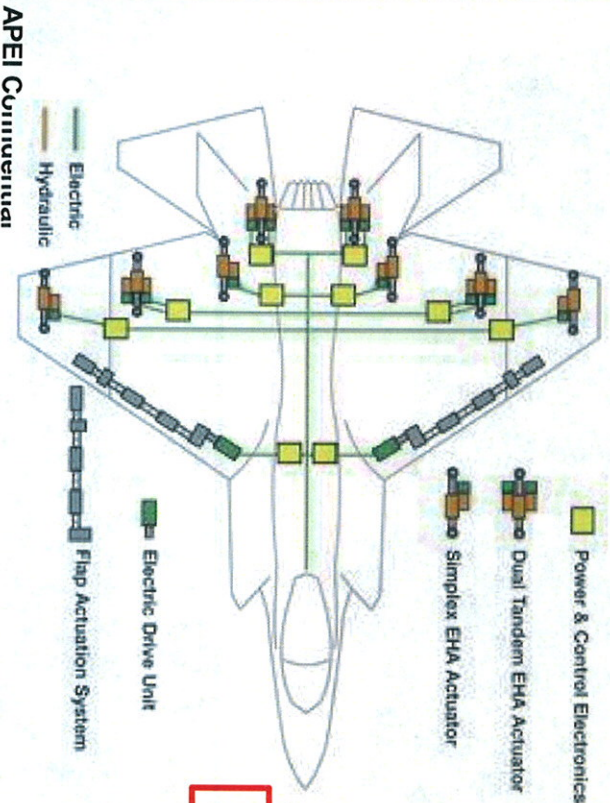
Sic Power Modules for F-35 JSF

- Project Application
 - F-35 flight control surface actuator drives
 - More Electric Aircraft mandate to replace heavy hydraulic actuators
- Project Objectives
 - Reduced weight (50% decrease)
 - Transition to manufacturing of Sic power modules for F-35



Phase III, Yr 1 Project Goals

- Install Sic device test and manufacturing equipment at APEI.
- Design the power modules for the flight control actuator drive for F-35 flight control surfaces
- Fabricate subcomponent prototypes
- Begin long term extreme environment reliability testing



MOOG

working w/ MOOG for F35

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U.S. Army Vehicle Program



Heavy Mobility Tactical Trucks (HEMTTs)
(Typically 225kW-500kW diesel engines)
~ 95,000 diesel trucks in inventory

SAIC

Light Tactical & Armored Fighting Vehicles
(Typically 150kW-500kW diesel engines)
~ 120,000 diesel LTVs and LAVs in inventory



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APEI, Inc. Manufacturing Facilities

Arkansas Research Technology Park



Present APEI location

R&D Facilities
7,000 sq. ft.



New APEI manufacturing location

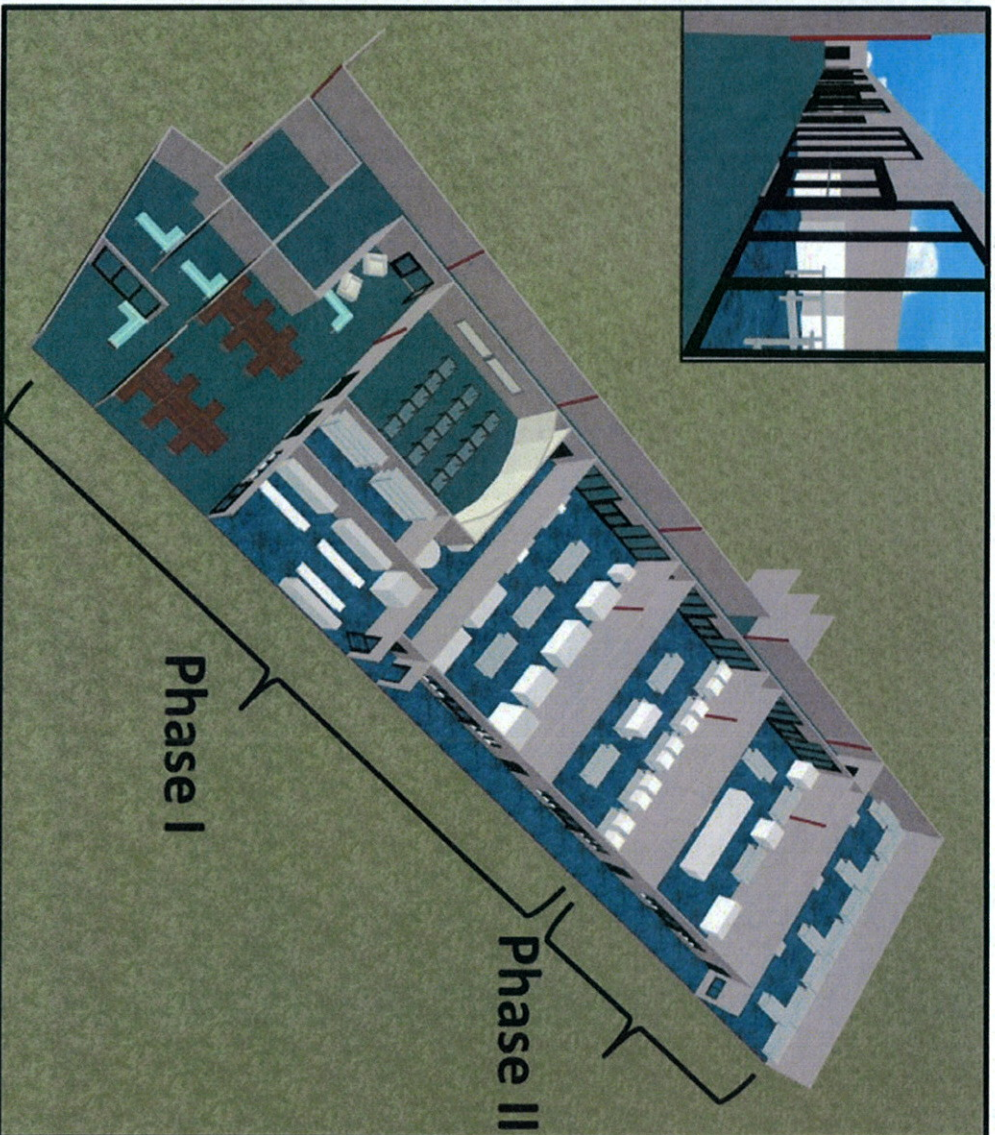
Manufacturing Facilities
8,000-12,000 sq. ft.

Arkansas Power Electronics International, Inc.

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APEI, Inc. Manufacturing Facilities



- Power module assembly facility
- 11,500 sq. ft. dedicated manufacturing space
- Class 1000 clean rooms
- ISO certified
- Phase I Operational by Q4 2010
- Phase II Operational by Q4 2011
- DBC Power Substrates
- Electronics Assembly
- LTCC
- Environmental Testing

APEI Confidential

Target 28x 58 ft.

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Phase I Equipment Cost

DBC Processing Line			
STEP	Price	Equipment MFG	Description
1-3	\$ 35,000		Clean/Rinse/Dry
4	\$12,000		photolaminator
5	\$35,000	Olec	Accuprint AP-30 UV Exposure
6	\$ 43,310	Chemcut	SA231SD Spray Developer (CHEMICAL Developer solution)
7	\$ 50,685	Chemcut	SA231SE Spray etcher (CHEMICAL Uses Ferric Chloride Acid)
8-9	\$ 36,455	Chemcut	SA231SS stripper (CHEMICAL stripper solution)
10	\$ 14,515	Chemcut	SA231SDR panel dry
11	\$ 5,000		EN vertical Plating bath
12	\$ 5,000		Au plating bath
13	\$ 5,000		Diamond Dicing Saw (Alternative option to Disco Dicing Saw)
SUBTOTAL		\$ 241,965	
Power Module Assembly Line			
STEP	Price	Equipment MFG	Description
1	\$ 55,745	Yield Engineering	YES G500 Plasma oven
2	\$ 50,000	Advanced Tech.	CAT90-SA2 Semi-automated pick-n-place
3	\$ 200,000	SST 5100	Vacuum Reflow Oven
4	\$ 160,000	F&K Delvotek	Chiller for SST5100 Cooling Water Chiller and Pump
5	\$75,000	Keyence	5600 Semi-Auto bonder 10 mil wire (Power) (3 bonding heads
6	\$ 5,794	Binder	VHX-600 digital microscope for inspection
7	\$ 85,000	Miyachi	Laser Seal
8	\$2,000		Automated epoxy dispenser
SUBTOTAL		\$ 633,539	
Support Equipment			
	Price	Equipment MFG	Description
	\$10,000		Stainless steel work tables, clean room qualified (10 tables)
	\$20,000		Clean room freezers and storage
	\$10,000		Particle counters / maintenance equipment
SUBTOTAL		\$ 40,000	

Equipment

Total: **\$915,504**
Total Sales & Use Tax: **\$84,685** *Refund*
 City of Fayetteville: **\$18,310** *(Not using)*
 Washington County: **\$11,444** *refund*
 State of Arkansas: **\$54,931** *refund*

Arkansas Power Electronics International, Inc.

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Job Creation and Taxes to be Paid

- APEI, Inc. expects to create ^{NEW} 25 jobs within the next 3 years, and a total of 75 jobs in the next 5 years.
- These are high paying technical positions, with average salaries of ~ \$85,000 (or greater than 3x the average Arkansas per capita income).
- Arkansas residents pay \$1290 per capita per year in sales tax into the state system and \$847 per capita per year in property taxes into the state system.
- Allowing for APEI, Inc.'s 3.15 per capita multiplication factor, APEI, Inc. employees will be paying on average \$4076 per employee per year in sales tax and \$2679 per employee per year in property taxes.

Year	Jobs	Salary Expense for that Year	Estimated (Payroll) AR Income Taxes	Estimated Sales Taxes	Estimated Property Taxes	Estimated Total Taxes from Employees
Year 1	5	\$561,000	\$39,270	\$20,382	\$13,395	\$73,047
Year 2	10	\$1,112,000	\$77,840	\$40,764	\$26,790	\$145,394
Year 3	25	\$2,800,000	\$196,000	\$101,910	\$66,975	\$364,885
Year 4	28	\$3,080,000	\$215,600	\$114,139	\$75,012	\$404,751
Year 5	55	\$6,160,000	\$431,200	\$224,202	\$147,344	\$802,746
Year 6	75	\$8,415,000	\$589,050	\$305,730	\$200,924	\$1,095,704
TOTAL Years 1-6		\$22,128,000	\$1,548,960	\$807,127	\$530,439	\$2,886,526

Year	Corporate Income	Corporate Taxes to Arkansas
Year 1	\$0	\$0
Year 2	\$1,114,970	\$72,473
Year 3	\$1,108,210	\$72,034
Year 4	\$2,354,501	\$153,043
Year 5	\$4,221,023	\$274,366
Year 6	\$11,682,825	\$759,384
TOTAL Years 1-6		\$1,331,299

Year	Total AR Taxes	Employee Taxes	Corporate Taxes
Year 1	\$73,047	\$73,047	\$0
Year 2	\$217,867	\$145,394	\$72,473
Year 3	\$436,918	\$364,885	\$72,034
Year 4	\$557,793	\$404,751	\$153,043
Year 5	\$1,077,113	\$802,746	\$274,366
Year 6	\$1,855,087	\$1,095,704	\$759,384
TOTAL Years 1-6	\$4,217,825	\$2,886,526	\$1,331,299

Approximate taxes to be paid by APEI, Inc. in state corporate taxes.

Approximate total taxes APEI, Inc. and new employees will contribute to Arkansas.

APEI Confidential

Recognized As "New Work Life Balance"
16
Good Quick Action
16
Last He Co.
100 - 2009 (Lover's) - 70100 R&D ideas in Western - to which was put

City of Fayetteville Staff Review Form

A. 9
Kearney National/Cooper Power
Page 1 of 152

City Council Agenda Items
and
Contracts, Leases or Agreements

5/18/2010

5/18/2010

City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: Approve land purchase from Kearney National/Cooper Power property required to construct the Runway 16 Safety Area Improvement Project.

\$ 218,907.87
Cost of this request

\$ 3,141,436.00
Category / Project Budget

Correct Runway 16 RSA
Program Category / Project Name

5550.3960.7820.38
Account Number

\$ 2,790,750.75
Funds Used to Date

D8100_AVED
Program / Project Category Name

07039 3
Project Number

\$ 350,685.25
Remaining Balance

Airport
Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Tony D. Gully
Department Director

4-29-10
Date

Previous Ordinance or Resolution # 119-09

Chris Kelly
City Attorney

4-30-10
Date

Original Contract Date:

Original Contract Number:

Paul A. Behn
Finance and Internal Services Director

5-3-2010
Date

Received in City
Clerk's Office



King

Don Man
Chief of Staff

5-3-10
Date

Received in
Mayor's Office



Frederick J. Jordan
Mayor

5/4/10
Date

Comments: AIP Grant #38 95/5% FAA/AR Dept Aeronautics

Subject to declassification on Grantee. JK



www.accessfayetteville.org

CITY COUNCIL MEMO

To: Mayor Jordan

Thru: Chief of Staff, Don Marr

Thru: Transportation Director, Terry Gulley *TG*

From: Ray M. Boudreaux, Aviation Director *RB*

Date: April 12, 2010

Subject: **Approve Real Estate Contract for purchase of Kearney National/Cooper Power property for construction of Ernest Lancaster Rd in conjunction with the RSA 16 Improvement Project at Fayetteville Executive Airport, Drake Field. Signature of the Mayor.**

PROPOSAL: In August 2009, the Mayor approved the Offer and Acceptance Contract for purchase of Kearney/Cooper land to accommodate the RSA 16 Improvement Project at the airport. Due to internal negotiations between Cooper Power and Kearney National, Cooper Power did not sign the contract and the purchase was delayed until an acceptable agreement could be reached between the companies. Kearney National is in the process of final ground water monitoring following cleanup activity concerning solvent contamination prior to 1995 at the plant. The property needed for the RSA Project is not contaminated by the spill but contains monitoring wells that will pick up any contamination should it migrate from the initial spill site. The option held by Cooper Power allows the company to consummate the purchase once the monitoring period is complete and a "no further action needed declaration" is issued by ADEQ. Cooper Power has worked diligently to reach an agreement with ADEQ and Kearney National to limit any potential liability that might occur should the contamination leach into the City property. The Implementing Agreement between ADEQ and Cooper Power is recognition of Cooper Power's entry into the Brownfields Program and outlines any potential actions necessary in the future to protect human health and the environment. All actions are complete and this item requests approval of the purchase contracts and the Mayor's signature on the documents for the City to purchase the property for the RSA 16 Improvement Project.

There are several documents needed to consummate this transaction to insure the City is protected from liability in the future. The Real Estate contract sells the property to Cooper Power from Kearney National. The Assignment Contract assigns the sale to the City of Fayetteville for the agreed upon price of \$217,200 plus closing costs. Integral to the contract are the deed restrictions which limit the use of the property to the designed improvement project, restricted use of the groundwater, and unrestricted access to the monitoring wells. These deed restrictions are acceptable as the airport only needs the property to realign Ernest Lancaster and the Airport Branch Drainage Ditch out of the Safety Area and associated utilities relocations. We will also allow certain landscaping that will facilitate the elimination of contaminants in the soil.

Secondary Documents provided for your information are the Implementing Agreement (IA), the Comprehensive Site Assessment (CSA) and the Phase I Environmental Assessment. The IA outlines actions that might be necessary in the future should contamination leach into the City Property. It is developed from information gathered in the CSA and the Phase I Environmental Assessment both provided by the prospective buyer to ADEQ for approval. Once approved, ADEQ publishes the IA which contains the Property Development Plan and the Property Development Decision Document.

This method of acquisition of the property needed for the RSA 16 Improvement Project was dictated by our desire to eliminate any potential liability for the previous owner's ground contamination and to assure proper and sufficient environmental protection of the property.

RECOMMENDATION: Approve the Real Estate Transaction that transfers the property to the City for the RSA 16 Improvement Project. Signature of the Mayor.

BUDGET IMPACT: This project is funded by FAA/AIP at 95% and Arkansas Aeronautics at 5%.

Attachments: Staff Review
Real Estate Contract
Assignment Agreement
Draft Deed
Draft Settlement Statement
Implementing Agreement between ADEQ and Cooper Power
Phase I Environmental Report
Comprehensive Site Assessment
Property Development Plan

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING PURCHASE IN LIEU OF CONDEMNATION PROCEEDINGS AUTHORIZED IN RESOLUTION 52-10 AND APPROVING A CONTRACT FOR THE PURCHASE OF LAND ADJOINING THE FAYETTEVILLE EXECUTIVE AIRPORT-DRAKE FIELD FROM KEARNEY-NATIONAL, INC., THROUGH AN ASSIGNMENT FROM COOPER POWER SYSTEMS, LLC, IN THE AMOUNT OF \$218,907.87, INCLUDING APPLICABLE CLOSING COSTS, AS PART OF THE RUNWAY 16 SAFETY AREA IMPROVEMENT 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 authorizes purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approves a contract, a copy of which is attached to this Resolution as Exhibit "A" and incorporated herein as if set out word for word, with Kearney-National, Inc., through an assignment from Cooper Power Systems, LLC, for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field in the total amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CHECK REQUEST

A. 9
Kearney National/Cooper Power
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Date: 4/18/2010

Vendor Number: 1830

Payable to: BRONSON ABSTRACT RMT1
3810 FRONT ST STE 5
FAYETTEVILLE AR 72703

Manual Check ☒ ☐

Mail Yes ☐ No ☐

Return Check to: Ray M Boudreaux

Send Copy to: _____

For: LAND PURCHASE - KEARNEY-NATIONAL, INC

AIP 38 RUNWAY 16 SAFETY AREA IMPROVEMENTS PROJECT

Separate Check Code A

Bank Number 012

Payable From: Fund Name AIRPORT

Amount of Check # \$ 218907.87

Charged as follows:

Account Name	Amount							
		Fund	Dept	Sub Dept	Base	Detail	Project	Sub Project
RUNWAY 16 SAFETY, PHASE 3	218,907.87	5550	3960		7820	38	07039	3
MANUAL CHECK TO BE PROCESSED 4/19/10								
CONTINGENT ON COUNCIL APPROVAL.								
CLOSING DATE SCHEDULED FOR 4/21/10								
TOTAL	\$218,907.87							

Additional Approval:

☐ Does Not Meet Purchasing Policy

☐ Contract Payment

☐ Other

Approved:

Prepared by: _____

Approved by: _____

Entered: _____

Accounting Use - Receipting

G/L Account Number _____

Key Code _____

**A. SETTLEMENT STATEMENT (HUD-1)**

OMB No. 2502-0265

Kearney National/Cooper Power

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B. TYPE OF LOAN1. ☐ FHA 2. ☐ FHMA 3. ☐ CONVENTIONAL
4. ☐ VA 5. ☐ CONV. INS.

6. FILE NUMBER: 19533-10 7. LOAN NUMBER

8. MORTGAGE INS. CASE NO.:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME & ADDRESS OF BORROWER: The City of Fayetteville

E. NAME & ADDRESS OF SELLER: Kearney- National, Inc.
P. O. Box 4446, Houston, TX 77210

F. NAME & ADDRESS OF LENDER:

G. PROPERTY LOCATION: Pt SW NE SW 33-16-30, Fayetteville, AR 72701

H. SETTLEMENT AGENT: Bronson Abstract Company, Inc.

PLACE OF SETTLEMENT: 3810 Front Street, Suite 5, Fayetteville, AR 72703 (479) 442-2700

I. SETTLEMENT DATE: 5/21/2010

DISBURSEMENT DATE: 5/21/2010

J. Summary of Borrower's Transaction**K. Summary of Seller's Transaction****100. Gross Amount Due From Borrower:****400. Gross Amount Due To Seller:**

101. Contract sales price	217,200.00
102. Personal property	
103. Settlement charges to borrower: (line 1400)	1,920.40
104.	
105.	

401. Contract sales price	217,200.00
402. Personal property	
403.	
404.	
405.	

Adjustments For Items Paid By Seller In Advance:**Adjustments For Items Paid By Seller In Advance:**

106. City/town taxes	to	
107. County taxes	to	
108. Assessments	to	
109.		
110.		
111.		
112.		
113.		
114.		
115.		
116.		

406. City/town taxes	to	
407. County taxes	to	
408. Assessments	to	
409.		
410.		
411.		
412.		
413.		
414.		
415.		
416.		

120. Gross Amount Due From Borrower: 219,120.40

420. Gross Amount Due To Seller: 217,200.00

200. Amounts Paid By Or In Behalf Of Borrower:**500. Reductions In Amount Due To Seller:**

201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	

501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff 1st Mtg. Ln.	
505. Payoff 2nd Mtg. Ln.	
506.	
507.	
508.	
509.	

Adjustments For Items Unpaid By Seller:**Adjustments For Items Unpaid By Seller:**

210. City/town taxes	to	
211. County taxes	01/01/10 to 05/21/10	212.53
212. Assessments	to	
213.		
214.		
215.		
216.		
217.		
218.		
219.		

510. City/town taxes	to	
511. County taxes	01/01/10 to 05/21/10	212.53
512. Assessments	to	
513.		
514.		
515.		
516.		
517.		
518.		
519.		

220. Total Paid By/For Borrower: 212.53

520. Total Reductions In Amount Due Seller: 212.53

300. Cash At Settlement From/To Borrower:**600. Cash At Settlement From/To Seller:**

301. Gross amount due from borrower (line 120)	219,120.40
302. Less amount paid by/for borrower (line 220)	212.53

601. Gross amount due to seller (line 420)	217,200.00
602. Less reductions in amount due seller (line 520)	212.53

303. Cash (☒FROM) (☐TO) Borrower: 218,907.87

603. Cash (☒TO) (☐FROM) Seller: 216,987.47

L.		SETTLEMENT	CHARGES	Escrow: 19533-10	A. 9	
700. Total Sales/Broker's Commission: Based On Price \$ 217,200.00 @ % =					Paid From Borrower's Funds At Settlement	Kearney National/Cooper Power Funds At Settlement
Division of Commission (line 700) As Follows:						
701.	\$	to				
702.	\$	to				
703.	Commission paid at settlement					
704.						
800. Items Payable In Connection With Loan:						
801.	Loan Origination fee %					
802.	Loan Discount %					
803.	Appraisal fee to:					
804.	Credit report to:					
805.	Lender's inspection fee					
806.	Mortgage insurance application fee to					
807.	Assumption fee					
808.						
809.						
810.						
811.						
812.						
813.						
814.						
815.						
816.						
817.						
818.						
819.						
820.						
821.						
900. Items Required By Lender To Be Paid In Advance:						
901.	Interest from	to	@ \$ /day (0 days)			
902.	Mortgage insurance premium for mo. to					
903.	Hazard insurance premium for yrs. to					
904.	Flood insurance premium for yrs. to					
905.						
906.						
1000. Reserves Deposited With Lender:						
1001.	Hazard insurance	0 months @ \$	0.00 per month			
1002.	Mortgage insurance	0 months @ \$	0.00 per month			
1003.	City property taxes	0 months @ \$	0.00 per month			
1004.	County property taxes	0 months @ \$	0.00 per month			
1005.	Annual assessments	0 months @ \$	0.00 per month			
1006.	Flood insurance	0 months @ \$	0.00 per month			
1007.		0 months @ \$	0.00 per month			
1008.	Aggregate Adjustment					
1009.						
1100. Title Charges						
1101.	Settlement or closing fee to Bronson Abstract Company, Inc.			300.00		
1102.	Abstract or title search to Bronson Abstract Company, Inc.			100.00		
1103.	Title examination to					
1104.	Title insurance binder to					
1105.	Document preparation to Bronson Abstract Company, Inc.			50.00		
1106.	Notary fees to					
1107.	Attorney's fees to (includes above item Numbers:)					
1108.	Title insurance to Bronson Abstract Company, Inc. (includes above item Numbers:)			676.00		
1109.	Lender's coverage \$					
1110.	Owner's coverage \$ 217,200.00 Premium: \$676.00					
1111.	Fed Ex charges to Bronson Abstract Company, Inc.			50.00		
1112.						
1113.						
1114.						
1200. Government Recording and Transfer Charges:						
1201.	Recording fees: Deed \$ 25.00	Mortgage \$ 0.00	Releases \$ 0.00	25.00		
1202.	City/county tax/stamps: Deed \$ 0.00	Mortgage \$ 0.00				
1203.	State tax/Stamp: Deed \$ 719.40	Mortgage \$ 0.00		719.40		
1204.						
1205.						
1300. Additional Settlement Charges:						
1301.	Survey to					
1302.	Pest inspection to					
1303.						
1304.						
1305.						
1306.						
1307.						
1308.						
1400.	Total Settlement Charge (Enter on line 103, Section J - and - line 502, Section K)			1,920.40		

SELLER'S AND/OR BORROWER'S STATEMENT

Escrow: 19533-10 A. 9

Kearney National/Cooper Power

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I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrowers/Purchasers

The City of Fayetteville

By: _____

Sellers

Kearney- National, Inc.

By: _____

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: _____ Date: _____

Lela R. Davis, Bronson Abstract Company, Inc.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

EXHIBIT

“A”

DRAFT AS OF 04/05/10; 5:00 P.M.

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT (this "**Contract**") is made and entered as of the Effective Date (defined in **Section 15**) by and between COOPER POWER SYSTEMS, LLC, a Delaware limited liability company ("**Buyer**"), and KEARNEY-NATIONAL INC., a Delaware corporation ("**Seller**").

For and in consideration of the mutual covenants and agreements contained in this Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. **PURCHASE AND SALE.** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller, the Property (defined in the next sentence) for the consideration, upon the terms and subject to the provisions and conditions hereinafter set forth. The "**Property**" means all or any portion of the land situated in Washington County, Arkansas, described in **Exhibit A** and commonly called by the parties, the "**Airport Tract**", together with any and all fixtures and improvements thereon. Not less than ten (10) days before the Scheduled Closing Date (as defined in **Section 5.1**), if necessary, Buyer shall cause a metes and bounds description of the Property to be prepared. The description of the Property, as designated by Buyer, shall be used at Closing (as defined in **Section 5.1**) as the exhibit to the Deed (as defined in **Section 5.2(a)**). Seller and Buyer agree that Buyer shall not be deemed to have acquired equitable title to any portion of the Property by entering into this Contract or by performing any covenants hereunder. It is the parties' intent that this Contract shall not convey or confer and Buyer shall not have any interest in the Property by virtue of this Contract, unless and until the Property is actually conveyed by Seller to Buyer by the Deed at Closing. Buyer shall acquire legal title to the Property at Closing if it occurs hereunder. The purchase and sale contemplated hereunder shall be "as is" without any representation or warranty as to the Property of any nature whatsoever, including without limitation, the physical condition of the Property, but shall not affect any contractual relationship between Cooper Power Systems LLC and Seller concerning the environmental remediation and indemnity regarding the Property.

2. **PURCHASE PRICE.** The total purchase price for the Property (the "**Purchase Price**") is \$500 and shall be paid at Closing in cash.

3. **EARNEST MONEY.** On or before two (2) Business Days (as defined in **Section 5.1**) after the date this Contract is executed by both Buyer and Seller, Buyer shall deliver to the office of _____ Title Company (the "**Title Company**"), as escrow agent, at _____, Arkansas _____, (by certified or cashier's check) the sum of \$100.00 as earnest money (together with any interest earned thereon, the "**Earnest Money**").

4. **TERMINATION OPTION ALTERNATIVES, EFFECTS AND CONSIDERATION.** Wherever in this Contract, Buyer or Seller is given the option to terminate this Contract, that party may either (1) waive such termination option (either by exercising an alternative election, if this Contract provides for one under the circumstances, or in any case by giving a written

waiver notice to the other party) or (2) exercise it (i) at any time (x) after the occurrence of the event or circumstances giving rise to that option and (y) before the applicable deadline specified herein, if any, for exercise of such option, (ii) by giving a written notice sufficient in form and substance to communicate to the other party that the electing party terminates this Contract (a "**Termination Notice**") and (iii) with the effects (the "**Termination Effects**") that the Title Company shall promptly deliver the Earnest Money to the party entitled to it as provided in the Section of this Contract granting such termination option (or, if not specified, to Buyer) and that neither party shall have any further right or obligation under or in respect of this Contract other than as specified in this Contract with respect to rights or obligations that survive termination; *provided* that upon any termination, the Title Company shall deliver One Hundred Dollars (\$100) of the Earnest Money to Seller as independent and sufficient consideration for this option contract.

5. CLOSING.

5.1 *Place and Time.* The closing of the purchase and sale of the Property (the "**Closing**") shall take place at the Title Company at 10:00 AM on the first "**Business Day**" (a day that is not a Saturday, Sunday or another day when national banks in the State of Arkansas are required or permitted to be closed) next following the expiration of ten (10) days after the last day of the Feasibility Period (as defined in *Section 6.1*), unless such date is changed in writing by Seller and Buyer. The date for which the Closing is scheduled to occur is herein called the "**Scheduled Closing Date**" and the date on which the Closing actually occurs is herein called the "**Closing Date**".

5.2 *Seller's Closing Deliveries.* At the Closing, Seller shall deliver to Buyer the following:

(a) a duly executed and acknowledged special warranty deed (the "**Deed**") conveying to Buyer fee simple title to the Property, free and clear of any and all liens, assessments and encumbrances other than those matters set forth on Exhibit B;

(b) a nonforeign affidavit as permitted by *Section 1445(b)(2)* of the Internal Revenue Code of 1986, as amended;

(c) evidence of Seller's and its closing representative's capacity and authority for the Closing; and

(d) all other papers necessary for proper completion of the Closing, duly executed.

5.3 *Buyer's Closing Deliveries.* At the Closing, Buyer shall pay or perform and deliver, at Buyer's sole cost and expense, the following:

(a) the Purchase Price in cash;

(b) evidence of Buyer's and its closing representative's capacity and authority for the Closing; and

(c) all other papers necessary for proper completion of the Closing.

5.4 *Closing Costs.* Buyer shall pay all escrow fees; costs of tax certificates; fees for preparation of the conveyance documentation; Buyer's attorneys' fees associated with this sale; Title insurance or survey; recording fees for the Deed and other expenses stipulated to be paid by Buyer under other provisions of this Contract. Seller shall pay Seller's attorneys' fees associated with the conveyance and other expenses stipulated to be paid by Seller under other provisions of this Contract.

6. *FEASIBILITY STUDY AND INSPECTION.* Buyer is responsible for all assessments, taxes and maintenance fees and there are no other rents, royalties or profits.

6.1 *Buyer's Feasibility Study and Feasibility Study Period/Seller's Termination Rights.* Buyer is hereby granted the right to conduct physical inspection of the Property (the "*Feasibility Period*") commencing on the Effective Date and ending at 5:00 PM, Central time, on the third (3rd) day after the Effective Date or sooner if Buyer so provides notice to Seller. Buyer or its designated agents may enter upon the Property for purposes of such analyses, tests and inspections as Buyer deems necessary for the Feasibility Study. If Buyer determines, in its sole judgment, that the Property for any reason is not suitable for Buyer's intended use or purpose, or is not in satisfactory condition, then Buyer may terminate this Contract by giving a Termination Notice to Seller at any time before expiration of the Feasibility Period, which shall have the Termination Effects and the Earnest Money shall be delivered to Buyer. The Feasibility Study shall be conducted at Buyer's expense. Likewise, Seller shall have the right to terminate this Contract at any time during the Feasibility Period by providing a Termination Notice to Buyer before the expiration of the Feasibility Period, whereupon the Earnest Money shall be delivered to Buyer.

6.2 *Indemnity re Feasibility Study.* Whether or not the Closing occurs, Buyer agrees to indemnify, defend and hold Seller harmless from all claims, liabilities, damages and causes of action (other than for or because of pre-existing conditions) arising out of the Feasibility Study performed by Buyer, its agents, independent contractors, servants or employees, unless due to the negligence of Seller, its agents, independent contractors, servants or employees. Seller must bring any claim for indemnity within thirty (30) days after the expiration of the Feasibility Period, or such claim shall be irrevocably lost.

7. *TITLE AND SURVEY.* Buyer may, at its option and expense, obtain (i) an Owner's Policy of Title Insurance insuring Buyer's fee simple title to the Property to be good and marketable and/or (ii) a current survey of the Property.

8. *BROKER.* Buyer and Seller represent and warrant to each other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with the sale of the Property by Seller to Buyer. Buyer and Seller shall each indemnify, defend and hold each other harmless from any claim, liability, obligation, cost or expense (including reasonable attorneys' fees and expenses) for fees or commissions relating to Buyer's purchase of the Property asserted against such party by any broker or other person claiming by, through or under the indemnifying party or whose claim is based on the indemnifying party's acts.

9. *DEFAULT.*

9.1 *Buyer's Default and Seller's Remedy.* Unless otherwise provided for herein, if Closing is not completed by reason of Buyer's breach or other failure to perform all obligations and conditions to be performed by Buyer, Seller, as Seller's sole and exclusive remedy, may terminate this Contract by giving a Termination Notice to Buyer, which shall have the Termination Effects and the Earnest Money shall be delivered to Seller as liquidated damages for Buyer's breach. Buyer and Seller hereby agree that actual damages would be difficult or impossible to ascertain and that such amount is a reasonable estimate of the damages for such breach.

9.2 *Seller's Default and Buyer's Remedy.* If Closing is not completed by reason of Seller's breach or other failure to perform all obligations and conditions to be performed by Seller, Buyer, as Buyer's sole and exclusive remedy, may either (i) terminate this Contract by giving a Termination Notice to Seller, which shall have the Termination Effects and the Earnest Money shall be delivered to Buyer, or (ii) enforce specific performance of this Contract, Buyer and Seller stipulating that the Property is unique.

10. *ATTORNEYS' FEES.* Any signatory to this Contract who is the prevailing party in any legal proceeding against any other signatory brought under or with respect to this Contract or the transaction contemplated by this Contract shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

11. *DAMAGE TO PROPERTY:* Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property between the Effective Date of this Contract and the Closing. Notwithstanding any other agreement between the parties or which may be related to the Property, Seller shall bear all risk of loss with respect to the Property before the Closing Date. If before the Closing Date, there shall occur damage to the Property caused by fire or other casualty, then in any such event, either Buyer or Seller may, at its option, elect to terminate this Contract by written notice to the other party within five (5) days after the date of Seller's notice to Buyer of the casualty or at the Closing, whichever is earlier, in which case the Earnest Money shall be delivered to Buyer, and neither party shall have any further rights or obligations hereunder, other than as set forth herein with respect to rights and obligations which survive termination. If neither Buyer nor Seller timely makes its election to terminate this Contract, then the Closing shall take place as provided herein without reduction of the Purchase Price, and there shall be assigned to Buyer at the Closing all interest of Seller in and to any casualty insurance proceeds.

12. *CONDEMNATION.* If before the Closing Date, condemnation proceedings are commenced against any portion of the Property, then, at Buyer's option exercisable within five (5) days after Seller notifies Buyer of the condemnation proceedings, Buyer may terminate this Contract by written notice to Seller, whereupon the Earnest Money shall be promptly delivered to Buyer and neither party shall have any further right or obligation hereunder, other than as specified herein with respect to rights or obligations that survive termination. If Buyer chooses not to terminate this Contract, or if Buyer does not exercise its right to terminate this Contract within the five (5) day period, then (i) the Closing shall proceed, (ii) Buyer shall accept title to the Property subject to the condemnation proceeding, (iii) at Closing Seller shall assign to Buyer any condemnation award and (iv) the Purchase Price shall not be reduced.

13. *MISCELLANEOUS.*

13.1 *Notices.* Any notice required or permitted to be delivered hereunder shall be deemed received when (i) personally delivered, (ii) two (2) Business Days after being sent by United States mail; postage prepaid; registered, certified or express mail; and properly addressed or (iii) one (1) Business Day after being deposited with a nationally recognized overnight courier service, charges prepaid and properly addressed. For purposes of this Subsection, the address of each party shall be that set forth below the signature of such party hereto with a copy to the other addressees (if any) named below the signature of such party.

13.2 *Party Choice of Law.* This Contract shall be construed under and in accordance with the laws of the State of Arkansas.

13.3 *Binds and Benefits Successors, Etc.* This Contract shall bind and benefit the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

13.4 *Illegal, Invalid or Unenforceable Provisions.* If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13.5 *Sole Agreement.* This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting this Contract's subject matter and cannot be changed except by their written consent.

13.6 *Time is of the Essence.* Time is of the essence in this Contract.

13.7 *Gender and Number of Words.* Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

13.8 *Exhibits.* Except where otherwise specified, all exhibits referred to in this Contract are attached to it (or intended by the parties so to be) and by such references are made a part of this Contract.

13.9 *Counterparts.* The parties may execute this Contract in one or more identical counterparts, all of which when taken together will constitute one and the same instrument.

13.10 *Extension to Business Day.* Whenever any determination is to be made or action to be taken on a date specified in this Contract, if such date shall fall upon a day that is not a Business Day, the date for such determination or action shall be extended to the first Business Day immediately thereafter.

14. *ASSIGNMENT.* Buyer may assign this Contract without Seller's prior written consent and without consideration to Seller, including to the City of Fayetteville or another party related to the City (collectively "Airport Related Party") to effectuate development/redevelopment of the

City of Fayetteville Airport. Upon any such assignment, Buyer and the assignee shall execute and deliver to Seller an assignment and assumption of this Contract, and all references herein to the Buyer shall be deemed to be references to such assignee. In the event of any such assignment to and assumption by an Airport Related Party, CPS shall be relieved of all obligations and liability under this Contract.

15. **EFFECTIVE DATE.** The "*Effective Date*" of this Contract shall be the date an original of this Contract, or original counterparts of this Contract, executed by both Seller and Buyer together with the Earnest Money are delivered to the Title Company, as reflected by the date the Title Company executes this Contract.

EXECUTED in multiple originals effective as of the date executed by the Title Company as shown below.

BUYER:

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Attention: _____
Phone: _____
Fax: _____

SELLER:

KEARNEY-NATIONAL, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Attention: _____
Phone: _____
Fax: _____

TITLE COMPANY:

Receipt of \$_____ Earnest Money is acknowledged in the form of _____.

By: _____
Name: _____
Title: _____

Date Signed: _____
(the Effective Date of the Contract)

Exhibit A
Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

Exhibit B

Deed

This Instrument Was Prepared By:

Douglas A. Yeager
600 Travis Street, Suite 2800
Houston, Texas 77002

SPECIAL WARRANTY DEED

THE STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THAT KEARNEY-NATIONAL INC., a Delaware corporation ("Grantor"), for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by [COOPER POWER SYSTEMS, LLC] [The City of Fayetteville], a Delaware limited liability company ("Grantee"), the receipt and sufficiency of which consideration are hereby acknowledged and confessed by Grantor, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto Grantee certain lands lying in the County of Washington and the State of Arkansas, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, together with any and all fixtures and improvements thereon (collectively, the "Property").

This Special Warranty Deed (this "Deed") is expressly made subject to the matters described on Exhibit B attached hereto and made a part hereof for all purposes, and to other restrictions and encumbrances of record, if any, shown of record in the county clerk's office where the Property is located, to the extent and only to the extent the same are valid and subsisting and affect all or any part of the Property (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, Grantee's successors and assigns, forever; and Grantor, for itself and its successors and assigns, does hereby covenant with Grantee, Grantee's successors and assigns, that Grantor will forever WARRANT and DEFEND all and singular the title to the Property unto Grantee, Grantee's successors and assigns, against all claims whatever by, through or under Grantor, but not otherwise, subject to the Permitted Exceptions.

WITNESS Grantor's hand and seal _____ day of _____, 2010.

Grantee's Address:

GRANTOR:

KEARNEY-NATIONAL INC.,
a Delaware corporation

ATTEST:

_____, Secretary

By _____
Name: _____
Title: _____

After Recording Return To:

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

On this ____ day of _____, 2010, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ and _____, to me personally well known, who stated that they were the _____ and Secretary of **KEARNEY-NATIONAL INC.**, a Delaware corporation, and were duly authorized in their respective capacities to execute the foregoing Special Warranty Deed for and in the name and behalf of said Corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing Special Warranty Deed for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2010.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A
PROPERTY

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

EXHIBIT B
PERMITTED EXCEPTIONS

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Entire Acreage)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this ____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

- A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.
- B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.
- C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property

Exhibit A

Property

Premises

The South Half ($S/\frac{1}{2}$) of the North Half ($N/\frac{1}{2}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter ($SW/\frac{1}{4}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Airport Tract)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this _____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.
- The Property shall only be used for roadway purposes.
- No buildings or other structures shall be constructed on the Property.
- The subsurface of the Property shall only be used to the extent necessary to construct a roadway on the Property, re-channel an abutting drainage ditch, and reroute a water line on the southeast corner of the Property.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name _____

Commission Expires

Exhibit A – Property (4.81 Acres)

Exhibit A

Property

EXHIBIT

“A”

DRAFT AS OF 04/05/10; 5:00 P.M.

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT (this "**Contract**") is made and entered as of the Effective Date (defined in **Section 15**) by and between COOPER POWER SYSTEMS, LLC, a Delaware limited liability company ("**Buyer**"), and KEARNEY-NATIONAL INC., a Delaware corporation ("**Seller**").

For and in consideration of the mutual covenants and agreements contained in this Contract and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. **PURCHASE AND SALE.** Seller agrees to sell and convey to Buyer, and Buyer agrees to buy from Seller, the Property (defined in the next sentence) for the consideration, upon the terms and subject to the provisions and conditions hereinafter set forth. The "**Property**" means all or any portion of the land situated in Washington County, Arkansas, described in **Exhibit A** and commonly called by the parties, the "**Airport Tract**", together with any and all fixtures and improvements thereon. Not less than ten (10) days before the Scheduled Closing Date (as defined in **Section 5.1**), if necessary, Buyer shall cause a metes and bounds description of the Property to be prepared. The description of the Property, as designated by Buyer, shall be used at Closing (as defined in **Section 5.1**) as the exhibit to the Deed (as defined in **Section 5.2(a)**). Seller and Buyer agree that Buyer shall not be deemed to have acquired equitable title to any portion of the Property by entering into this Contract or by performing any covenants hereunder. It is the parties' intent that this Contract shall not convey or confer and Buyer shall not have any interest in the Property by virtue of this Contract, unless and until the Property is actually conveyed by Seller to Buyer by the Deed at Closing. Buyer shall acquire legal title to the Property at Closing if it occurs hereunder. The purchase and sale contemplated hereunder shall be "as is" without any representation or warranty as to the Property of any nature whatsoever, including without limitation, the physical condition of the Property, but shall not affect any contractual relationship between Cooper Power Systems LLC and Seller concerning the environmental remediation and indemnity regarding the Property.

2. **PURCHASE PRICE.** The total purchase price for the Property (the "**Purchase Price**") is \$500 and shall be paid at Closing in cash.

3. **EARNEST MONEY.** On or before two (2) Business Days (as defined in **Section 5.1**) after the date this Contract is executed by both Buyer and Seller, Buyer shall deliver to the office of _____ Title Company (the "**Title Company**"), as escrow agent, at _____, Arkansas _____, (by certified or cashier's check) the sum of \$100.00 as earnest money (together with any interest earned thereon, the "**Earnest Money**").

4. **TERMINATION OPTION ALTERNATIVES, EFFECTS AND CONSIDERATION.** Wherever in this Contract, Buyer or Seller is given the option to terminate this Contract, that party may either (1) waive such termination option (either by exercising an alternative election, if this Contract provides for one under the circumstances, or in any case by giving a written

waiver notice to the other party) or (2) exercise it (i) at any time (x) after the occurrence of the event or circumstances giving rise to that option and (y) before the applicable deadline specified herein, if any, for exercise of such option, (ii) by giving a written notice sufficient in form and substance to communicate to the other party that the electing party terminates this Contract (a "**Termination Notice**") and (iii) with the effects (the "**Termination Effects**") that the Title Company shall promptly deliver the Earnest Money to the party entitled to it as provided in the Section of this Contract granting such termination option (or, if not specified, to Buyer) and that neither party shall have any further right or obligation under or in respect of this Contract other than as specified in this Contract with respect to rights or obligations that survive termination; *provided* that upon any termination, the Title Company shall deliver One Hundred Dollars (\$100) of the Earnest Money to Seller as independent and sufficient consideration for this option contract.

5. CLOSING.

5.1 *Place and Time.* The closing of the purchase and sale of the Property (the "**Closing**") shall take place at the Title Company at 10:00 AM on the first "**Business Day**" (a day that is not a Saturday, Sunday or another day when national banks in the State of Arkansas are required or permitted to be closed) next following the expiration of ten (10) days after the last day of the Feasibility Period (as defined in *Section 6.1*), unless such date is changed in writing by Seller and Buyer. The date for which the Closing is scheduled to occur is herein called the "**Scheduled Closing Date**" and the date on which the Closing actually occurs is herein called the "**Closing Date**".

5.2 *Seller's Closing Deliveries.* At the Closing, Seller shall deliver to Buyer the following:

(a) a duly executed and acknowledged special warranty deed (the "**Deed**") conveying to Buyer fee simple title to the Property, free and clear of any and all liens, assessments and encumbrances other than those matters set forth on Exhibit B;

(b) a nonforeign affidavit as permitted by *Section 1445(b)(2)* of the Internal Revenue Code of 1986, as amended;

(c) evidence of Seller's and its closing representative's capacity and authority for the Closing; and

(d) all other papers necessary for proper completion of the Closing, duly executed.

5.3 *Buyer's Closing Deliveries.* At the Closing, Buyer shall pay or perform and deliver, at Buyer's sole cost and expense, the following:

(a) the Purchase Price in cash;

(b) evidence of Buyer's and its closing representative's capacity and authority for the Closing; and

(c) all other papers necessary for proper completion of the Closing.

5.4 *Closing Costs.* Buyer shall pay all escrow fees; costs of tax certificates; fees for preparation of the conveyance documentation; Buyer's attorneys' fees associated with this sale; Title insurance or survey; recording fees for the Deed and other expenses stipulated to be paid by Buyer under other provisions of this Contract. Seller shall pay Seller's attorneys' fees associated with the conveyance and other expenses stipulated to be paid by Seller under other provisions of this Contract.

6. *FEASIBILITY STUDY AND INSPECTION.* Buyer is responsible for all assessments, taxes and maintenance fees and there are no other rents, royalties or profits.

6.1 *Buyer's Feasibility Study and Feasibility Study Period/Seller's Termination Rights.* Buyer is hereby granted the right to conduct physical inspection of the Property (the "*Feasibility Period*") commencing on the Effective Date and ending at 5:00 PM, Central time, on the third (3rd) day after the Effective Date or sooner if Buyer so provides notice to Seller. Buyer or its designated agents may enter upon the Property for purposes of such analyses, tests and inspections as Buyer deems necessary for the Feasibility Study. If Buyer determines, in its sole judgment, that the Property for any reason is not suitable for Buyer's intended use or purpose, or is not in satisfactory condition, then Buyer may terminate this Contract by giving a Termination Notice to Seller at any time before expiration of the Feasibility Period, which shall have the Termination Effects and the Earnest Money shall be delivered to Buyer. The Feasibility Study shall be conducted at Buyer's expense. Likewise, Seller shall have the right to terminate this Contract at any time during the Feasibility Period by providing a Termination Notice to Buyer before the expiration of the Feasibility Period, whereupon the Earnest Money shall be delivered to Buyer.

6.2 *Indemnity re Feasibility Study.* Whether or not the Closing occurs, Buyer agrees to indemnify, defend and hold Seller harmless from all claims, liabilities, damages and causes of action (other than for or because of pre-existing conditions) arising out of the Feasibility Study performed by Buyer, its agents, independent contractors, servants or employees, unless due to the negligence of Seller, its agents, independent contractors, servants or employees. Seller must bring any claim for indemnity within thirty (30) days after the expiration of the Feasibility Period, or such claim shall be irrevocably lost.

7. *TITLE AND SURVEY.* Buyer may, at its option and expense, obtain (i) an Owner's Policy of Title Insurance insuring Buyer's fee simple title to the Property to be good and marketable and/or (ii) a current survey of the Property.

8. *BROKER.* Buyer and Seller represent and warrant to each other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with the sale of the Property by Seller to Buyer. Buyer and Seller shall each indemnify, defend and hold each other harmless from any claim, liability, obligation, cost or expense (including reasonable attorneys' fees and expenses) for fees or commissions relating to Buyer's purchase of the Property asserted against such party by any broker or other person claiming by, through or under the indemnifying party or whose claim is based on the indemnifying party's acts.

9. *DEFAULT.*

9.1 *Buyer's Default and Seller's Remedy.* Unless otherwise provided for herein, if Closing is not completed by reason of Buyer's breach or other failure to perform all obligations and conditions to be performed by Buyer, Seller, as Seller's sole and exclusive remedy, may terminate this Contract by giving a Termination Notice to Buyer, which shall have the Termination Effects and the Earnest Money shall be delivered to Seller as liquidated damages for Buyer's breach. Buyer and Seller hereby agree that actual damages would be difficult or impossible to ascertain and that such amount is a reasonable estimate of the damages for such breach.

9.2 *Seller's Default and Buyer's Remedy.* If Closing is not completed by reason of Seller's breach or other failure to perform all obligations and conditions to be performed by Seller, Buyer, as Buyer's sole and exclusive remedy, may either (i) terminate this Contract by giving a Termination Notice to Seller, which shall have the Termination Effects and the Earnest Money shall be delivered to Buyer, or (ii) enforce specific performance of this Contract, Buyer and Seller stipulating that the Property is unique.

10. *ATTORNEYS' FEES.* Any signatory to this Contract who is the prevailing party in any legal proceeding against any other signatory brought under or with respect to this Contract or the transaction contemplated by this Contract shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

11. *DAMAGE TO PROPERTY:* Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property between the Effective Date of this Contract and the Closing. Notwithstanding any other agreement between the parties or which may be related to the Property, Seller shall bear all risk of loss with respect to the Property before the Closing Date. If before the Closing Date, there shall occur damage to the Property caused by fire or other casualty, then in any such event, either Buyer or Seller may, at its option, elect to terminate this Contract by written notice to the other party within five (5) days after the date of Seller's notice to Buyer of the casualty or at the Closing, whichever is earlier, in which case the Earnest Money shall be delivered to Buyer, and neither party shall have any further rights or obligations hereunder, other than as set forth herein with respect to rights and obligations which survive termination. If neither Buyer nor Seller timely makes its election to terminate this Contract, then the Closing shall take place as provided herein without reduction of the Purchase Price, and there shall be assigned to Buyer at the Closing all interest of Seller in and to any casualty insurance proceeds.

12. *CONDEMNATION.* If before the Closing Date, condemnation proceedings are commenced against any portion of the Property, then, at Buyer's option exercisable within five (5) days after Seller notifies Buyer of the condemnation proceedings, Buyer may terminate this Contract by written notice to Seller, whereupon the Earnest Money shall be promptly delivered to Buyer and neither party shall have any further right or obligation hereunder, other than as specified herein with respect to rights or obligations that survive termination. If Buyer chooses not to terminate this Contract, or if Buyer does not exercise its right to terminate this Contract within the five (5) day period, then (i) the Closing shall proceed, (ii) Buyer shall accept title to the Property subject to the condemnation proceeding, (iii) at Closing Seller shall assign to Buyer any condemnation award and (iv) the Purchase Price shall not be reduced.

13. *MISCELLANEOUS.*

13.1 *Notices.* Any notice required or permitted to be delivered hereunder shall be deemed received when (i) personally delivered, (ii) two (2) Business Days after being sent by United States mail; postage prepaid; registered, certified or express mail; and properly addressed or (iii) one (1) Business Day after being deposited with a nationally recognized overnight courier service, charges prepaid and properly addressed. For purposes of this Subsection, the address of each party shall be that set forth below the signature of such party hereto with a copy to the other addressees (if any) named below the signature of such party.

13.2 *Party Choice of Law.* This Contract shall be construed under and in accordance with the laws of the State of Arkansas.

13.3 *Binds and Benefits Successors, Etc.* This Contract shall bind and benefit the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

13.4 *Illegal, Invalid or Unenforceable Provisions.* If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13.5 *Sole Agreement.* This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting this Contract's subject matter and cannot be changed except by their written consent.

13.6 *Time is of the Essence.* Time is of the essence in this Contract.

13.7 *Gender and Number of Words.* Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

13.8 *Exhibits.* Except where otherwise specified, all exhibits referred to in this Contract are attached to it (or intended by the parties so to be) and by such references are made a part of this Contract.

13.9 *Counterparts.* The parties may execute this Contract in one or more identical counterparts, all of which when taken together will constitute one and the same instrument.

13.10 *Extension to Business Day.* Whenever any determination is to be made or action to be taken on a date specified in this Contract, if such date shall fall upon a day that is not a Business Day, the date for such determination or action shall be extended to the first Business Day immediately thereafter.

14. *ASSIGNMENT.* Buyer may assign this Contract without Seller's prior written consent and without consideration to Seller, including to the City of Fayetteville or another party related to the City (collectively "Airport Related Party") to effectuate development/redevelopment of the

City of Fayetteville Airport. Upon any such assignment, Buyer and the assignee shall execute and deliver to Seller an assignment and assumption of this Contract, and all references herein to the Buyer shall be deemed to be references to such assignee. In the event of any such assignment to and assumption by an Airport Related Party, CPS shall be relieved of all obligations and liability under this Contract.

15. **EFFECTIVE DATE.** The "*Effective Date*" of this Contract shall be the date an original of this Contract, or original counterparts of this Contract, executed by both Seller and Buyer together with the Earnest Money are delivered to the Title Company, as reflected by the date the Title Company executes this Contract.

EXECUTED in multiple originals effective as of the date executed by the Title Company as shown below.

BUYER:

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Attention: _____
Phone: _____
Fax: _____

SELLER:

KEARNEY-NATIONAL, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Attention: _____
Phone: _____
Fax: _____

TITLE COMPANY:

Receipt of \$ _____ Earnest Money is acknowledged in the form of _____.

By: _____
Name: _____
Title: _____

Date Signed: _____
(the Effective Date of the Contract)

Exhibit A

Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

Exhibit B

Deed

This Instrument Was Prepared By:
Douglas A. Yeager
600 Travis Street, Suite 2800
Houston, Texas 77002

SPECIAL WARRANTY DEED

THE STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THAT KEARNEY-NATIONAL INC., a Delaware corporation ("Grantor"), for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by [COOPER POWER SYSTEMS, LLC] [The City of Fayetteville], a Delaware limited liability company ("Grantee"), the receipt and sufficiency of which consideration are hereby acknowledged and confessed by Grantor, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto Grantee certain lands lying in the County of Washington and the State of Arkansas, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, together with any and all fixtures and improvements thereon (collectively, the "Property").

This Special Warranty Deed (this "Deed") is expressly made subject to the matters described on Exhibit B attached hereto and made a part hereof for all purposes, and to other restrictions and encumbrances of record, if any, shown of record in the county clerk's office where the Property is located, to the extent and only to the extent the same are valid and subsisting and affect all or any part of the Property (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, Grantee's successors and assigns, forever; and Grantor, for itself and its successors and assigns, does hereby covenant with Grantee, Grantee's successors and assigns, that Grantor will forever WARRANT and DEFEND all and singular the title to the Property unto Grantee, Grantee's successors and assigns, against all claims whatever by, through or under Grantor, but not otherwise, subject to the Permitted Exceptions.

WITNESS Grantor's hand and seal _____ day of _____, 2010.

Grantee's Address:

GRANTOR:

KEARNEY-NATIONAL INC.,
a Delaware corporation

ATTEST:

_____, Secretary

By _____
Name: _____
Title: _____

After Recording Return To:

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

On this ____ day of _____, 2010, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ and _____, to me personally well known, who stated that they were the _____ and Secretary of **KEARNEY-NATIONAL INC.**, a Delaware corporation, and were duly authorized in their respective capacities to execute the foregoing Special Warranty Deed for and in the name and behalf of said Corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing Special Warranty Deed for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2010.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A
PROPERTY

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

EXHIBIT B
PERMITTED EXCEPTIONS

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Entire Acreage)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this ____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

- A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.
- B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.
- C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property

Exhibit A

Property

Premises

The South Half ($S/\frac{1}{2}$) of the North Half ($N/\frac{1}{2}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter ($SW/\frac{1}{4}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Airport Tract)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this ____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.
- The Property shall only be used for roadway purposes.
- No buildings or other structures shall be constructed on the Property.
- The subsurface of the Property shall only be used to the extent necessary to construct a roadway on the Property, re-channel an abutting drainage ditch, and reroute a water line on the southeast corner of the Property.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property (4.81 Acres)

Exhibit A

Property

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

Draft of 4/05/10; 5:00 PM

ASSIGNMENT OF REAL ESTATE CONTRACT

THIS ASSIGNMENT OF REAL ESTATE CONTRACT, hereinafter referred to as this "Assignment," dated as of _____, 2010, is made and entered into by and between COOPER POWER SYSTEMS, LLC, a Delaware limited liability company ("Assignor"), and THE CITY OF FAYETTEVILLE, ARKANSAS a _____ ("Buyer").

RECITALS:

Kearney-National Inc., a Delaware corporation ("Seller"), and Assignor entered into that certain Real Estate Contract dated as of _____, 2010 (as amended, the "Contract"), which provides for the potential purchase and sale of certain real property ("Property"), described on Exhibit A hereto attached, to Assignor. Assignor now desires to assign the Contract to Buyer.

CONTRACTS:

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Buyer do hereby agree as follows:

Section 1. Assignment of Contract. Assignor hereby assigns all of its rights, duties and obligations under the Contract to Buyer, and Buyer assumes all of Assignor's duties and obligations under the Contract. All references in the Contract to "Buyer" shall hereafter be deemed to refer to Buyer herein.

Section 2. Consideration. Buyer hereby agrees to remit to Assignor contemporaneously with its execution hereof the sum of \$ _____ in currently collected funds, as consideration for Assignor's rights in and to the Contract.

Section 3. Prorations. Assessments, taxes, and similar charges for the current year will be prorated between Assignor and Buyer as of the Closing Date.

Section 4. Definitions and References. Terms used herein, which are not otherwise defined or modified herein but which are defined in the Contract shall have the meanings therein ascribed to them. The term "Contract" as used in the Contract or any other instrument, document or writing furnished to Seller by Buyer shall mean the Contract as hereby assigned.

Section 5. "As-Is" Transaction. **BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN ACQUIRING AND OWNING REAL ESTATE SIMILAR TO THE PROPERTY COVERED BY THE CONTRACT AND THAT BUYER, PRIOR TO THE CLOSING DATE WILL HAVE INSPECTED THE PROPERTY (INCLUDING ITS ENVIRONMENTAL CONDITION) TO ITS SATISFACTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY ASSIGNOR OR ANY OF ITS**

REPRESENTATIVES. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS ASSIGNMENT, BUYER HEREBY AGREES TO THE ASSIGNMENT OF THE CONTRACT AS-IS, WHERE-IS, WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND INCLUDING REGARDING THE PROPERTY, ATTRIBUTABLE TO ASSIGNOR, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS AND LIABILITIES INCLUDING ANY LIABILITY WITH RESPECT TO ENVIRONMENTAL LAWS AND BUYER EXPRESSLY WAIVES, RELEASES, AND AGREES NOT TO SUE ASSIGNOR (TO THE EXTENT ALLOWED BY APPLICABLE LAW) FOR ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW (INCLUDING, BUT NOT LIMITED TO, COMMON LAW, WHETHER SOUNDING IN CONTRACT OR TORT, AND ANY AND ALL ENVIRONMENTAL STATUTORY LAWS) THAT BUYER MIGHT OTHERWISE HAVE OR LATER ACQUIRE RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY.

Section 6. Miscellaneous. This Assignment (a) shall be binding upon and inure to the benefit of Seller, Assignor and Buyer, and their respective heirs, legal representatives, successors, assigns, receivers and trustees; (b) may be modified or amended only by a writing signed by each party hereto; (c) shall be governed by and construed in accordance with the laws of the State of Arkansas; (d) may be executed by facsimile signatures and in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original Assignment, and all such separate counterparts shall constitute but one and the same Assignment; and (e) embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this Assignment.

IN WITNESS WHEREOF, Assignor and Buyer have caused this Assignment to be executed effective as of the date first written above.

ASSIGNOR:

BUYER:

COOPER POWER SYSTEMS, LLC, THE CITY OF FAYETTEVILLE, ARKANSAS
a Delaware limited liability company a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

This Instrument Was Prepared By:

Douglas A. Yeager
600 Travis Street, Suite 2800
Houston, Texas 77002

SPECIAL WARRANTY DEED

THE STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THAT KEARNEY-NATIONAL INC., a Delaware corporation ("Grantor"), for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by [COOPER POWER SYSTEMS, LLC] [The City of Fayetteville], a Delaware limited liability company ("Grantee"), the receipt and sufficiency of which consideration are hereby acknowledged and confessed by Grantor, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto Grantee certain lands lying in the County of Washington and the State of Arkansas, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, together with any and all fixtures and improvements thereon (collectively, the "Property").

This Special Warranty Deed (this "Deed") is expressly made subject to the matters described on Exhibit B attached hereto and made a part hereof for all purposes, and to other restrictions and encumbrances of record, if any, shown of record in the county clerk's office where the Property is located, to the extent and only to the extent the same are valid and subsisting and affect all or any part of the Property (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anywise belonging, unto Grantee, Grantee's successors and assigns, forever; and Grantor, for itself and its successors and assigns, does hereby covenant with Grantee, Grantee's successors and assigns, that Grantor will forever WARRANT and DEFEND all and singular the title to the Property unto Grantee, Grantee's successors and assigns, against all claims whatever by, through or under Grantor, but not otherwise, subject to the Permitted Exceptions.

WITNESS Grantor's hand and seal _____ day of _____, 2010.

Grantee's Address:

GRANTOR:

KEARNEY-NATIONAL INC.,
a Delaware corporation

ATTEST:

_____, Secretary

By _____

Name: _____

Title: _____

After Recording Return To:

ACKNOWLEDGMENT

STATE OF _____ §
COUNTY OF _____ §

On this ____ day of _____, 2010, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ and _____, to me personally well known, who stated that they were the _____ and Secretary of **KEARNEY-NATIONAL INC.**, a Delaware corporation, and were duly authorized in their respective capacities to execute the foregoing Special Warranty Deed for and in the name and behalf of said Corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing Special Warranty Deed for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission Expires:

(SEAL)

EXHIBIT A
PROPERTY

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

EXHIBIT B
PERMITTED EXCEPTIONS

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Entire Acreage)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this _____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name _____

Commission Expires

Exhibit A – Property

Exhibit A

Property

Premises

The South Half (S/½) of the North Half (N/½) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter (SW/¼) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Airport Tract)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this _____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.
- The Property shall only be used for roadway purposes.
- No buildings or other structures shall be constructed on the Property.
- The subsurface of the Property shall only be used to the extent necessary to construct a roadway on the Property, re-channel an abutting drainage ditch, and reroute a water line on the southeast corner of the Property.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property (4.81 Acres)

Exhibit A

Property

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

COOPER POWER SYSTEMS, LLC.

PARTICIPANT

REGARDING:

APPROXIMATELY 19.42 ACRE TRACT OF LAND
3660 SOUTH SCHOOL STREET
FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS
AFIN: _____

LIS No. –

IMPLEMENTING AGREEMENT

This Implementing Agreement (hereinafter "IA") shall establish remedial requirements and financial liabilities of Cooper Power Systems, LLC (hereinafter the "PARTICIPANT") associated with the Property located at 3660 South School Street, Fayetteville, Washington County, Arkansas (hereinafter the "Property"). This IA is entered into by the PARTICIPANT and the Arkansas Department of Environmental Quality (hereinafter "ADEQ") pursuant to the authority of the Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. §§ 8-7-201 et. seq.), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; A.C.A. §§ 8-7-501 et. seq.), the Arkansas Pollution Control and Ecology Commission ("APC&EC") Regulation Number 23, Hazardous Waste Management, (hereinafter "Regulation 23"), the Arkansas Voluntary Cleanup Act (Act 1042 of 1997) (as amended), (A.C.A. §§ 8-7-1101 et. seq.) (hereinafter the "Arkansas Brownfields Program"), and the APC&EC Regulation Number 29, Brownfields Redevelopment.

FINDINGS OF FACT

1. The Property is located at 3660 South School Street, Fayetteville, Washington County, Arkansas. The legal description of the 19.42-acre tract, which is comprised of two (2) parcels:

The South Half (S/½) of the North Half (N/½) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter (S/¼) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion

thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

2. PARTICIPANT meets the requirements for participation in the Arkansas Brownfields Program as described in Arkansas Code Annotated ("A.C.A.") ' 8-7-1104(a) and is competent and authorized to execute this IA.
3. The site is a parcel located in the southeastern part of the City of Fayetteville in roughly the central part of Washington County, Arkansas. The Property was used historically for industrial purposes from approximately 1954 until the present. Kearney National, Inc. ("KNI") conducted industrial operations at the Property from 1954 until 1997, when it leased the property to Participant. KNI plant operations included metal plating, tin dipping, solvent degreasing, and lead fusing associated with the electrical equipment manufacturing business. In 1997 Cooper leased the Property from KNI and has used it for assembly and warehousing of components used in the electrical power industry. The Property remains developed with an approximate 135,000 s.f. electrical equipment assembly facility, and an approximate 30,000 s.f. warehouse. Two parking lots are allocated on the property. Since 1997, KNI as responsible party, has undertaken response action at the property and in August 2000 entered into a CAO with ADEQ, which outlined the regulatory, legal, and timing issues of the remediation to be performed. The buildings are currently occupied by PARTICIPANT pursuant to its lease with KNI. Through the implementation of the CAO, the releases of hazardous substances at the Property do not pose either (i) an unacceptable risk, either acute or chronic to the health of employees or other person likely to be exposed to the release from the Property based upon the site use contemplated hereby or (ii) an unacceptable risk to degrade either ground waters or surface waters or any risk to degrade Arkansas' extraordinary resource waters.
4. In December of 2009, the PARTICIPANT submitted a letter of intent and Brownfields Application, which set forth the Participant's desire to take title to the Property and retain eligibility for participation in the Brownfields Program as described in A.C.A. § 8-7-1101 (8).
5. In January 2010, ADEQ sent a letter declaring the PARTICIPANT's eligibility for participation in the Arkansas Brownfields Program as described in A.C.A. § 8-7-1104 (a), therefore authorizing the PARTICIPANT to acquire title to all or part of the Property and still retain its eligibility for the Arkansas Brownfields Program.

6. The PARTICIPANT warrants it is not responsible for any preexisting pollution at or contamination on any of the Property. Additionally, the PARTICIPANT did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on or from the Property and ADEQ has concluded PARTICIPANT is not otherwise considered to be a responsible party pursuant to A.C.A. § 8-7-512(a)(11).
7. The PARTICIPANT agrees the Property will not, at any time, be transferred to any party responsible for such pollution or contamination on the Property. If such transfer is made, this IA and any certificate of completion issued hereunder shall be null and void.
8. In February 2010, Land Recycling Company, Inc. ("LRC") submitted a Phase I Environmental Site ("ESA") that was approved by ADEQ in March 2010 in compliance with PARTICIPANT'S Brownfield Application. In March 2010, LRC on behalf of the PARTICIPANT, conducted a Comprehensive Site Assessment ("CSA") dated March 2010, on the Property as part of the requirements of the Arkansas Brownfields Program.

In conducting the CSA, LRC reviewed the Phase I ESA and sampling data compiled by KNI in connection with the work it was performing under the CAO. Based on the results of KNI's soil and groundwater sampling, trichloroethylene ("TCE") was detected in soil and ground water samples. Gasoline Range Organics ("GRO") were also detected in soil samples and compounds were initially detected in 1997 in soil samples. Subsequent groundwater sampling in 1998 indicated the presence of TCE, benzene, and other chlorinated solvents which in some cases exceeded MCLs. The 1998 sampling event again indicated that both soils and shallow groundwater were impacted. A former AST operated by Kearney was determined to be the source of the benzene and GRO in groundwater; and TCE was a cleaning solvent, which according to records reviewed by LRC was commonly used by Kearney.

9. The ADEQ Hazardous Waste Division personnel reviewed the CSA and the findings and report were approved April 19, 2010.
10. Consequently, the PARTICIPANT has committed at this time to a particular future land use for the Property and has agreed to execute a real estate contract to buy 4.81 acres more or less (described on Exhibit A hereto ("Airport Tract")), which shall be used by the City of Fayetteville ("City") as part of the City's plan to further develop improvements to its airport facility. PARTICIPANT shall assign

such contract to the City so the City may utilize the tract as needed for airport development. PARTICIPANT has agreed to release the Airport Tract from its lease with KNI which shall further enable the City to construct roadway, rechannel the drainage ditch, and reroute water service lines. PARTICIPANT has agreed to restrict or cause the entire Property, including the Airport Tract, to be restricted for use not inconsistent with commercial/light industrial zoning uses, as well as to prohibit the use of groundwater on the Property as described herein.

AGREEMENT

The issues herein, as they pertain to the Property, having been settled by the agreement of the PARTICIPANT and ADEQ, it is hereby agreed and stipulated by all Parties the IA be entered herein and that the PARTICIPANT comply with the following provisions.

1. The PARTICIPANT, within ten (10) days of the effective date of this IA, shall public notice this IA in a newspaper of general circulation that serves the City of [Fayetteville] area. The notice shall identify the Property, the intended future land use, and the nature of the activities to be conducted on the Property. The PARTICIPANT shall provide proof of this publication to ADEQ within thirty (30) days of the effective date of this IA.
2. A Property Development Plan ("PDP") pertaining to the Airport Tract has been submitted to ADEQ and is attached as Exhibit B and is hereto as an Amendment to this IA. Such PDP is deemed approved.
3. ADEQ shall issue a Property Development Decision Document ("PDDD"), as necessary, to address any contamination identified in the CSA. Pursuant to Ark. Code Ann. §8-7-1104(h)(1), ADEQ shall provide public notice and opportunity for hearing on any such PDDD. **[Note: to Terry Sligh – is this necessary in light of KNI's agreements under the CAO; is the PDDD required by the statute?]**
4. ADEQ shall issue a final PDDD, considering all comments submitted, pursuant to the public notice discussed in Paragraph 3 above. The approved final PDDD shall become an Amendment to this IA.
5. The PARTICIPANT shall complete or cause to be completed the Remedial Action Activities (defined below in Paragraph 7), as addressed in the final PDDD.
6. The PARTICIPANT shall file, within thirty (30) days of the effective date of this IA, or within thirty

(30) days of it or the City acquiring legal title to the site, a notice of the IA with the clerk of the Circuit Court in Washington County, Real Estate Section. Notice of any amendments to this IA also shall be filed by PARTICIPANT with the Clerk of the Circuit Court in Washington County within thirty (30) days after their effective dates. The Clerk of the Circuit Court shall docket and record the notices so they appear in the purchaser's chain of title. A file marked copy shall be submitted to ADEQ, within forty-five (45) days of this IA.

7. The Remedial Action Alternatives required to be conducted by PARTICIPANT hereunder are:
 - a. CPS shall establish institutional controls through deed recordation of the following restrictions pursuant to the Declaration of Restrictive Covenants attached hereto as Exhibit C, which shall run with the land:
 - (i) Restricting usage of the Property solely to commercial/light industrial zoning regulations.
 - (ii) Limiting the use of the Airport Tract to roadway purposes;
 - (iii) Prohibiting the use of groundwater beneath the Property;
 - (iv) Providing access to KNI so it may conduct the work contemplated by the CAO; and
 - (v) Requiring that monitoring and other wells remain in place during any period required by the ADEQ.
 - b. CPS shall cause to be planted reasonable vegetative cover, plants and shrubs on the Airport Tract to facilitate natural attenuation.
 - c. Except for the Remedial Action Alternatives described above, CPS shall no further responsibility with regard to any past contamination of the Property.
8. The PARTICIPANT shall submit a completion report to ADEQ within forty-five (45) days of completing the Remedial Action Activities associated with the PDP and the PDDD. The completion report should include information to document the site has been redeveloped according to the provisions mutually agreed upon in the IA, the approved PDP and the PDDD. After ADEQ receives this information and verifies the work has been completed, a Certificate of Completion will be issued.

9. The PARTICIPANT shall file a deed restriction for the Property, in the form attached hereto as Exhibit C, to restrict the use of the Property to activities and compatible uses which will protect the integrity of any remedial action measures implemented on the Property.
10. The PARTICIPANT shall provide a copy of this IA to all prospective owners or successors before either (i) any contract it executes to acquire all or part of the Property is assigned to a third party, including the City as to the Airport Tract or (ii) all or part of the Property is transferred to the prospective owner or successor.
11. The PARTICIPANT shall take all reasonable steps necessary to prevent aggravating or contributing to the contamination of the air, land or water, including downward migration of contamination, from any existing contamination on the site. The term existing contamination shall include any contamination set forth in the CSA approved by ADEQ.
12. The PARTICIPANT shall not use or redevelop the site in a manner that differs from the terms or procedures established under this IA.
13. The PARTICIPANT shall not be responsible for paying any fines or penalties related to the past contamination of the Property, nor are responsible for any past contamination on the Property, other than the Remedial Action Activities. The term "past contamination" shall include any contamination set forth in the CSA approved by ADEQ.
14. Nothing in this IA shall be construed as a waiver of liability for future contamination of the Property by the PARTICIPANT, subsequent owners, or third-parties.
15. This IA, including all rights and clean-up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the Property. By its execution hereof, the ADEQ hereby approves its transfer to the City, upon PARTICIPANT'S request, in which event both the PARTICIPANT and City shall be entitled to the benefits hereof.
16. Subsequent owners shall receive a copy of the IA from the Property owner and shall not develop or use the Property in a manner which is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this IA, including ADEQ. In the event the intended use of the Property is to be altered from the use described in the IA, PDP and PDDD, ADEQ will evaluate the

protectiveness of the remedial action to determine if the proposed use would be protective of human health and the environment.

Absent such a determination by ADEQ, any liability assurances contained in this IA and amendments thereto or certificates of completion issued hereunder, shall be null and void.

17. Participation in the Arkansas Brownfields Program can be withdrawn by the PARTICIPANT at any time upon written notification to ADEQ. In turn, if the PARTICIPANT fails to complete the terms and conditions set forth in this IA, and at the time of withdrawal has acquired the property and is considered to be the legal owner of the property, the ADEQ reserves the right to deem the PARTICIPANT in violation of this IA and the PARTICIPANT will be notified in writing that their enrollment in the Arkansas Brownfields Program is no longer valid and the PARTICIPANT will be liable for any past contamination found on the site.
18. This IA shall become effective upon the signature of the Director of ADEQ.

IT IS SO AGREED.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Date: _____

Director
Teresa Marks

PARTICIPANT

COOPER POWER SYSTEMS, LLC

By: _____

Date: _____

Title: _____

Exhibit A: Airport Tract
Exhibit B: Property Development Plan (Airport Tract)
Exhibit C: Declaration of Restrictive Covenants

Exhibit A

Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

Exhibit B

Property Development Plan (Airport Tract)

PROPERTY DEVELOPMENT PLAN
Kearney-National, Inc. Property
Fayetteville, Arkansas

I. INTRODUCTION

This Property Development Plan (PDP) is being prepared for the Kearney-National, Inc. ("KNI") property located at 3660 South School Street, Fayetteville, Washington County, Arkansas ("the Property" or "the Kearney Property") by Cooper Power Systems, LLC ("Cooper") of Houston, Texas. Cooper was approved by Arkansas Department of Environmental Quality ("ADEQ") into the Brownfields Program on January 25, 2010 under Arkansas Code Annotated ("ACA") & 8-7-1104(a) and qualifies as a prospective purchaser of the 4.81 acres ("Airport Tract") of Kearney Property for subsequent purchase and development by the City of Fayetteville ("City") into an airport facility tract. It is contemplated that Cooper will enter into a real estate contract to acquire the City Tract and then assign such Contract to the City who shall acquire the City Tract directly from KNI. The Kearney Property and the Airport Tract are described on the documents attached hereto as Exhibits A and B respectively.

Cooper has submitted and revised with technical comments received from ADEQ, as part of the requirements of the ADEQ Brownfield Program, a Phase I Environmental Site Assessment ("ESA") and a Comprehensive Site Assessment ("CSA"), prepared by The Land Recycling Company, Inc. ("LRC"). The Phase I ESA and the CSA were approved by ADEQ in March 2010 and April 2010, respectively in order to retain the applicants Comprehensive Environmental Response, Compensation and Liability Act liability relief under the All Appropriate Inquiry rule set for the in 40 CFR Part 312.

II. SITE DESCRIPTION

The site is a parcel located in the southeastern part of the City of Fayetteville approximately in the central part of Washington County, Arkansas. The Property was used historically for industrial purposes from approximately 1954 until the present. KNI conducted industrial operations at the Property from 1954 until 1997, when it leased the property to Cooper. KNI plant operations included metal plating, tin dipping, solvent degreasing, and lead fusing associated with the electrical equipment manufacturing business. In 1997 Cooper leased the Property from KNI for assembly and warehousing of components used in the electrical power industry and did not use any chlorinated solvents in its operation. The Property remains developed with an approximate 135,000 square foot electrical equipment assembly facility, and an approximate 30,000 square foot warehouse. Two parking lots are also located on the property.

III. PREVIOUS INVESTIGATIONS AND REMEDIATION

Since 1997, KNI, as the responsible party for the chlorinated solvent contamination and other contamination identified on the Property, has undertaken response actions at the site and in August 2000, entered into a Consent Administrative Order (CAO) with ADEQ, which outlined the regulatory, legal, and timing issues of the soil and groundwater removal and remediation activities completed and yet to be performed on the Property.

In conducting the CSA, LRC reviewed the sampling data compiled by KNI in connection with the work it was performing under the CAO. Based on the results of KNI's soil and groundwater sampling, trichloroethylene ("TCE") and other chlorinated compounds were detected in soil and ground water samples. Gasoline Range Organics ("GRO") were also detected in soil samples. Subsequent groundwater sampling in 1998 indicated the presence of TCE, benzene, and other chlorinated solvents which in some cases exceeded Maximum Contaminant Levels ("MCLs"). The 1998 sampling event again indicated that both soils and shallow groundwater were impacted. A former AST operated by Kearney was determined to be the source of the benzene and GRO in groundwater; TCE is a cleaning solvent, which was commonly used by KNI.

In 2005 extensive soil remediation was completed by KNI with ADEQ's approval. The groundwater remediation is on going process with KNI proposing a Monitored Natural Attenuation Plan ("MNAP") in January 2006, with semiannual groundwater monitoring for five years. The five year MNA monitoring period expires the end of 2010.

IV. HUMAN HEALTH & ECOLOGICAL RISK

Documentation prepared by KNI indicates that the only current exposure pathway, from a human health and ecological risk standpoint, is the vapor intrusion pathway from on-site groundwater for indoor on-site workers. However, indoor air sample results indicate contaminant concentrations in indoor air were well below established guidelines and standards.

V. PLANNED PROPERTY DEVELOPMENT

Planned development on the southern 4.81 acres of the Kearney Property ("the Airport Tract") by the City of Fayetteville consists of the expansion of the adjacent Fayetteville Executive Airport. The proposed airport expansion activities will include construction of a roadway (relocation of Lancaster Drive), rechanneling of a drainage ditch and the re-routing of underground water lines. The use of the remainder of the Kearney Property will remain unchanged for the foreseeable future. The attached drawing illustrates the planned development of the Airport Tract by the Fayetteville Executive Airport (McClelland Consulting Engineers, 2009).

VI. PROPOSED REMEDIAL ACTION

- A. Cooper will establish working with the City of Fayetteville and KNI, institutional controls on the airport tract through deed recordation of the following property restrictions and requirements which will run with the land:
1. Restricting usage of the Kearney Property solely to commercial/light industrial zoning regulations;
 2. Limiting the use of the Airport Tract to roadway purposes;
 3. Prohibiting the use of groundwater beneath the Kearney Property;
 4. Providing access to KNI so it may conduct the work contemplated by the CAO;
 5. Requiring that monitoring wells remain in place during any period required by ADEQ;
 6. Allow the City of Fayetteville to move or install at KNI's direction, one shallow downgradient well for volatile organic monitoring and plume definition;
 7. All soils generated by the City's contractors for the road construction and utility work will be disposed of off-site as nonhazardous; and
 8. Provide access for KNI and its representatives, including the ADEQ, for monitoring and conducting any remedial field work required by KNI to comply with the CAO.
- B. Cooper will coordinate with the City and cause KNI personnel to plant certain vegetative cover, plants and shrubs on the Airport Tract in order to seek to facilitate natural attenuation.
- C. Once the property development is finished by the City of Fayetteville and documented by their consultant, McClelland Consulting Engineers, Cooper along with the City of Fayetteville will ask for a Certificate of Completion from ADEQ.
- D. The Remedial Action described in this Article VI shall be the sole response action/remedial action required of Cooper and/or the City with regard to the Kearney Property and the City Tract.

Exhibit A

Kearney Property

Premises

The South Half ($S/\frac{1}{2}$) of the North Half ($N/\frac{1}{2}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter ($SW/\frac{1}{4}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

Exhibit B

Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

Exhibit C

Declaration of Restrictive Covenants

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Entire Acreage)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this _____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property

Exhibit A

Property

Premises

The South Half ($S/\frac{1}{2}$) of the North Half ($N/\frac{1}{2}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter ($SW/\frac{1}{4}$) of the Northeast Quarter ($NE/\frac{1}{4}$) of the Southwest Quarter ($SW/\frac{1}{4}$) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

**DECLARATION OF RESTRICTIVE COVENANTS
(Airport Tract)**

STATE OF ARKANSAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF WASHINGTON §

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into this _____ day of _____, 2010, by COOPER POWER SYSTEMS, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the owner of the real property (the "Property") more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. Declarant desires to impose certain restrictive covenants upon the Property as fully set forth herein.

C. The restrictive covenants herein contained shall run with the land and be binding upon any and all parties now or hereafter having an interest in the Property.

AGREEMENT:

NOW, THEREFORE, and in consideration of the foregoing premises, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Declarant, as owner of the Property, for the benefit of the Enforcement Parties (as hereinafter defined) does hereby stipulate, covenant and agree as follows:

1. Consent Administrative Order. The Property is the subject of a Consent Administrative Order, LIS 00-138, dated August 3, 2000 (the "Consent Administrative Order"), and any remedial actions conducted thereunder. Further upon completion of said remedial actions, the Property will be subject to terms and conditions of a "No Further Action" letter, Certificate of Completion, or similar instrument contemplated by the Consent Administrative Order."

2. Restrictions. Declarant, as the owner of the Property, hereby imposes the following restrictive covenants (hereinafter referred to as the "Restrictive Covenants") on the Property, which Restrictive Covenants shall be covenants running with the Property, binding upon and observed by Declarant and its successors and assigns as they may acquire an interest in all or any portion of the Property:

- The Property may not be used or redeveloped in any way that is inconsistent with heavy commercial/light industrial zoning regulations.

DRAFT OF 04/23/10; 4:00 PM

- No use shall be made of the groundwater underlying the Property; provided that the Enforcement Parties (as defined below) may hereafter amend this restriction to limit it to the minimum area or depth required to obtain the No Further Action letter or Certificate of Completion contemplated by Paragraph 32 of the Consent Administrative Order and/or regulations promulgated by the Arkansas Department of Environmental Quality ("ADEQ").
- Existing monitoring and other wells shall remain in place during any period required by the ADEQ.
- The Property shall only be used for roadway purposes.
- No buildings or other structures shall be constructed on the Property.
- The subsurface of the Property shall only be used to the extent necessary to construct a roadway on the Property, re-channel an abutting drainage ditch, and reroute a water line on the southeast corner of the Property.

3. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or entity violating or attempting to violate any of Restrictive Covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. The only parties entitled to enforce the Restrictive Covenants shall be the Enforcement Parties. Declarant hereby grants each Enforcement Party the right to enforce the Restrictive Covenants. The legal fees incurred by an Enforcement Party in the enforcement of the Restrictive Covenants shall be paid by the person or entity against whom enforcement is sought should such Enforcement Party prevail in such action. As used herein, the term "Enforcement Parties" shall mean Cooper Power Systems, LLC and Kearney-National Inc. and "Enforcement Party" shall mean each of them.

4. Amendment. The Restrictive Covenants may be altered or amended only by a written declaration signed and acknowledged by both Enforcement Parties and recorded in the Real Property Records of Washington County, Arkansas.

5. Severability. Invalidity of any one of the Restrictive Covenants by judgment or court order shall in no way affect any of the other Restrictions, which shall remain in full force and effect.

6. Recordation. This Declaration shall be recorded in the Real Property Records of Washington County, Arkansas.

DRAFT OF 04/23/10; 4:00 PM

EXECUTED this _____ day of _____, 2010.

COOPER POWER SYSTEMS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, the _____ of COOPER POWER SYSTEMS, LLC, a Delaware limited liability company. on behalf of said limited liability company.

Notary Public, State of _____

Notary's Printed Name

Commission Expires

Exhibit A – Property (4.81 Acres)

Exhibit A

Property

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

1.0 INTRODUCTION

The Land Recycling Company, Inc. (LRC) was retained by Cooper US, Inc., parent of Cooper Power Systems, LLC (Cooper) to perform a Phase I Environmental Site Assessment (ESA) Update of the real estate owned by Kearney-National, Inc. ("the subject property" or "the Kearney Property") located at 3660 South School Street in Fayetteville, Washington County, Arkansas. A Site Location Map is presented as Figure Number 1 in Appendix A.

Kearney-National, Inc. ("Kearney") has been pursuing an environmental investigation and clean up at the subject property since approximately 1997. According to ADEQ records, the investigation and clean up activities are a result of a release of hazardous materials (chlorinated solvents) and gasoline from a former above ground storage tank ("AST") to the soil and groundwater on the subject property during past operations conducted by Kearney. Based on our review of the ADEQ files, the soil remediation is complete; the groundwater remediation is on going. Cooper Power Systems, LLC, a division of Cooper US, Inc., is currently leasing only the structure and the land's surface for assembly and warehousing of electrical fuses and breakers. Cooper has entered the Arkansas Department of Environmental Quality ("ADEQ") Brownfield Program so that it may qualify for the protection offered by the program should it ultimately purchase the Kearney Property.

1.1 Purpose

LRC performed this Phase I ESA Update according to the standard for Phase I ESAs published by the American Society of Testing and Materials (ASTM Standard E 1527-05). Phase I ESAs which are more than six months old must be updated according to the ASTM Standard. The goal of this process is to define good commercial and customary practice in the United States of America for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and petroleum products. This practice is intended to allow the User to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner or bona fide prospective purchaser limitations on CERCLA liability, that is, the practice constitutes all appropriate inquiry into the previous ownership and uses of the Property consistent with good commercial or customary practice.

1.2 Detailed Scope of Services

- An updated visual inspection of the subject property and surrounding properties was conducted by LRC for this Phase I ESA Update on February 2, 2010. The subject property and surrounding properties were inspected for the presence or evidence of recognized environmental conditions. The term "recognized environmental conditions" or "RECs" means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of

any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property (ASTM Standard E 1527-05).

- An updated computer database search was performed by Environmental Data Resources, Inc. (EDR) on behalf of LRC. This search provides information regarding compliance with environmental regulations for the subject property and nearby properties. LRC reviewed the database for potential environmental concerns.
- Representatives of Cooper Power Systems, LLC, the City of Fayetteville and the Washington County Environmental Affairs office were interviewed by LRC regarding past and current conditions of the subject property. We also reviewed available online ADEQ records.
- An updated environmental lien search was conducted by EDR and reviewed by LRC for evidence of potential environmental concerns.

2.0 SITE DESCRIPTION

2.1 Location

The Kearney Property is located at 3660 South School Street in the southeastern part of the City of Fayetteville, in roughly the central part of Washington County, Arkansas. A General Site Plan is presented as Drawing Number 1 in Appendix B.

2.2 General Site and Vicinity Characteristics

The Kearney Property is approximately 19 acres in size and is shaped like an inverted "L". The subject property includes an approximate 135,000 square foot electrical equipment assembly facility, offices and an approximate 30,000 square foot warehouse. Two parking lots are also located in the Kearney Property.

The land surrounding the subject property is predominantly used for industry. The subject property is located within the Ozark Mountains region of Arkansas which is characterized by eroded plateaus (hills) and intervening valleys. The topography of the subject property is relatively flat as it is located in a valley.

Photographs from the site visit conducted by LRC are presented in Appendix C.

2.3 Current Uses of the Property

The surface of the land and structures are currently leased Cooper Power Systems, LLC for assembling electrical switchgear, fusing equipment, tools and connectors. Facility operations include a machine shop, assembly area, small wastewater treatment plant,

warehouse, administrative offices, shipping and receiving. Chlorinated solvents have not been used at the site, nor has Cooper operated any gasoline storage tanks on site.

2.4 Description of Site Related Structures

The Kearney Property includes an approximate 135,000 square foot electrical equipment assembly facility, administrative offices and an approximate 30,000 square foot warehouse. The manufacturing portion of the plant is comprised of a concrete foundation, concrete block walls and metal roofing which is covered with foam insulation and rubber. Two parking lots are also located on the subject property. The subject property is surrounded by chain link fence and has a secure gated entrance on South School Street.

Nitrogen and hydrogen tanks, which are located on the north east exterior of the manufacturing plant, are used in an interior annealing oven. The annealing process is utilized for softening of metals before they are worked in the various assembly processes. The nitrogen and hydrogen gases displace oxygen within the oven so that a reducing atmosphere is created.

Two sets of electrical transformers, which are the responsibility of Southwest Energy Power Company (SWEPCO), are located at the Kearney Property. Three pole-mounted transformers are located on the eastern exterior of the facility. A pad-mounted transformer is located on the northwest exterior of the administrative office portion of the facility.

2.5 Current Uses of Adjoining Properties

During the site visit, LRC observed the current uses of the properties which currently adjoin the Kearney Property for recognized environmental conditions. Following is a list of current adjoining property uses:

- | | |
|------------|---|
| North: | The adjacent property to the north of the subject property is occupied by the Army National Guard 142 nd Fire Brigade. |
| East: | The adjacent property to the east of the subject property consists of McCollum Road and thence vacant agricultural property. |
| South: | The adjacent property to the south of the subject property is Drake Field and its runway system. |
| Southeast: | The adjacent property to the southeast of the subject property consists of Scurlock Industries (formerly known as EnviroSearch Company d/b/a Tri-State Pre-Cast). |
| West: | Property to the west consists of South School Street (U.S. Highway 71) thence The Standard Register Company. |

2.6 Previous Environmental Investigations and Remediation

LRC completed a Phase I ESA of the Kearney Property in January 2009 (Revised February 2009). Recommendations by LRC in the Phase I ESA report included:

- That Cooper enter the State of Arkansas Brownfield Program prior to purchase of the property in order to obtain a release of liability for past contamination caused by Kearney or other prior owners/operators.
- That asbestos containing materials (ACM) located within the on site building should be replaced as necessary utilizing qualified outside contractors, and appropriate plant personnel should be adequately trained in the applicable asbestos regulations.

Additional environmental assessment includes subsurface investigations at the Kearney Property beginning in 1997. The initial investigation was conducted by HSI GeoTrans on behalf of Cooper when they purchased the equipment, but not the real property.

HSI GeoTrans installed twelve subsurface soil borings using a direct push device. Five "grab" groundwater samples were collected from the borings using temporary piezometers. Trichloroethylene ("TCE") was detected in all of the soil samples and in two of the groundwater samples. These two groundwater samples indicated levels of TCE in excess of Maximum Contaminant Levels ("MCLs") for drinking water. TCE is a cleaning solvent and, based on ADEQ records, was commonly used during past operations by Kearney. Gasoline Range Organics ("GRO") were also detected in all soil samples, two of which exceeded state-established standards for Total Petroleum Hydrocarbons ("TPH"). TCE and its daughter compounds have subsequently been identified as the Contaminants of Concern ("COCs") at the Kearney Property.

As a follow up to the initial GeoTrans investigation, according to records we received, Kearney contracted with FTN Associates ("FTN") to conduct additional field investigations at the subject property in March 1998. The additional work by FTN again indicated the presence of TCE, benzene and other chlorinated solvents which in some wells exceeded the established MCLs for drinking water; some concentrations of chlorinated compounds indicated the possible presence of Dense Non-Aqueous Phase Liquids ("DNAPLs"). Again, both soils and shallow groundwater were determined to have been impacted. A former AST was determined to be the source of the benzene and GRO in groundwater and soil; the tank was subsequently removed by Kearney.

In April 1998 ADEQ records show that Kearney began meeting voluntarily with ADEQ regarding environmental conditions at the subject property. Additional delineation of the contamination was performed by FTN, including sampling in a nearby creek and on the EnviroSearch/Tri-State property, which was located directly adjacent to the Kearney Property to the southeast (currently the location of Scurlock Industries). Neither the creek nor EnviroSearch/Tri-State was determined to have been impacted by the contamination at the subject property.

ADEQ records reviewed show that Kearney contracted with Brown and Caldwell (BC) to evaluate remedial alternatives; Kearney and the ADEQ subsequently entered into a Consent Administrative Order ("CAO"), with FTN as the consultant, in August 2000 which outlined the regulatory, legal and timing issues of the remediation to be performed at the subject property.

We understand that remediation of the contaminated soils at the subject property is complete. Based on records made available to us and interviews, the remediation consisted of excavation of two areas on the eastern side of the plant building; one area of excavation was beneath a former concrete pad (140 ft x 60 ft x 12.5 ft deep) and the second area of excavation (35 ft x 35 ft x 16 ft deep) was formerly used to dispose of clay residues. The depth of excavation was determined by the depth of the shale layer beneath the property.

Excavated soils were treated on the subject property via low temperature thermal desorption. The established clean up goal was five milligrams per kilogram (mg/kg). Treated soils were subsequently backfilled on the subject property and the excavated areas have been graded and seeded.

Planned remedial action for the contaminated groundwater at the Kearney Property consists of injection of chemicals which will enhance the natural attenuation process. Injection wells have been installed for this purpose; however, no actual injection of the enhancement materials had occurred at the time of this report.

The 1997 HSI GeoTrans report also included the results of an asbestos inspection. The asbestos inspection report indicated the presence of Asbestos Containing Materials (ACM) which exceed 1% asbestos in floor tiles and mastic throughout the office areas, as well as in insulation on a 2-inch water pipe and gasket material on a cooling chamber in the production area. All the ACM was classified in good condition at the time of the inspection. The report recommended maintenance of the ACM.

An "Annual ACM Examination Form" dated May 8, 2006 which was provided to LRC by Cooper personnel indicates that ACM is contained only in "black mastic underneath non asbestos containing 12 x 12 tan, white & brown marble pattern floor tile" in various office spaces and "coating material" on ceiling tiles located above the suspended ceilings in various areas within the office spaces and lavatories.

3.0 RECORDS REVIEW

3.1 Standard Environmental Records Sources

LRC obtained an updated environmental records database for the Kearney Property from EDR, a nationally recognized provider of this type of information. The EDR database contains information on both federal and state environmental records, and uses search distances from the subject property in accordance with current ASTM standards. LRC reviewed the updated database for potential environmental concerns. A copy of the updated database is located in Appendix D. The EDR database includes the following environmental data and search distances:

<u>Database Information Records</u>	<u>Search Distance (Miles)</u>
US Brownfields	0.5
NPL	1.0
Proposed NPL	1.0
NPL Liens	TP*
CERCLIS	0.5
CERLIS-NFRAP	0.5
Liens 2	TP
CORRACTS	1.0
RCRA-TSDF	0.5
RCRA-Large Quantity Generator	0.25
RCRA-Small Quantity Generator	0.25
RCRA CESQG	0.25
RCRA NON-GEN	0.25
US ENG CONTROLS	0.5
US INST CONTROL	0.5
ERNS	TP
DOT OPS	TP
US CDL	TP
SHWS	1.0
SWF/LF	0.5
LTANKS	0.5
UST	0.25
SWRCY	0.5
SWID	0.5
CONSENT	1.00
ROD	1.0
Delisted NPL	1.0
FINDS	TP
HMIRS	TP
MLTS	TP
MINES	0.25
DOD	1.0
PADS	TP

Database Information Records

Search Distance (Miles)

RAD INFO	TP
FUDS	1.0
LUCIS	0.5
ODI	0.5
UMTRA	0.5
DEBRIS REGION 9	0.5
Indian Reservations	1.0
RAATS	TP
SCRD DRYCLEANERS	0.5
TRIS	TP
TSCA	TP
FTTS	TP
HIST FTTS	TP
SSTS	TP
ICIS	TP
AST	0.25
SPILLS	TP
INST CONTROL	0.5
VCP	0.5
STATE BROWNFIELDS	0.5
AR Sludge	0.5
PERMITS	0.5
ENF	TP
AIRS	TP
ASBESTOS	TP
INDIAN ODI	0.5
INDIAN LUST	0.5
INDIAN UST	0.25
INDIAN VCP	0.5
Manufactured Gas Plants	1.0
COAL ASH	0.5
COAL ASH EPA	0.5
PCB TRANSFORMER	TP
COAL ASH DOE	TP

*TP = Target Property i.e., the subject property.

3.2 Environmental Records Review Results

The Kearney National Property was listed in a number of the environmental databases searched by EDR. Following is a brief discussion of those findings:

CORRACTS (Corrective Action Report)

The Kearney Property (listed as the "Kearney National Inc. Remediation Project") was identified as a CORRACTS site. This database lists hazardous waste handlers with RCRA Corrective Action activity. This designation is related to past environmental investigations and remediation at the subject property.

RCRA-TSDF (Transporters, Storage and Disposal)

The Kearney Property (listed as the "Kearney National Inc. Remediation Project") was identified as a RCRA TSDF site. This database includes information on sites which generate, transport, store, treat and/or dispose of hazardous waste. Again, this designation is related to the remediation at the subject property.

RCRA-NonGen (Non-Generators)

The Kearney Property (listed as the "Kearney National Inc. Remediation Project" and "Cooper Power Systems, Inc.") were both identified as a Non-Generators of hazardous waste, which indicates that neither the remediation project nor the current plant operations generate hazardous waste at the present time.

PADS (PCB Activity Database System)

The Kearney Property was identified as a PADS site. This database lists generators, transporters, commercial storers and/or brokers and disposers of Polychlorinated Biphenyls (PCBs) who are required to notify EPA of these activities. However, the EDR document does not specify any details regarding any PCB-related activities at the Kearney National Property.

Two sets of electrical transformers, which sometimes contain PCBs, are located at the Kearney Property. Three pole-mounted transformers are located on the eastern exterior of the facility. A pad-mounted transformer is located on the northwest exterior of the administrative office portion of the facility.

FINDS (Facility Index System/Facility Registry System)

The Kearney Property was identified as a FINDS site. The FINDS database contains both facility information and "pointers" to other sources of information that contain more detail. The EDR search includes the Arkansas Permit Data System, National Emissions Inventory, US EPA Toxic Release Inventory System, National Pollutant Discharge Elimination System, RCRA information and the Permit Compliance System.

ENF (Consent Administrative Order, Notice of Violations Database)

The Kearney Property was identified as an Enforcement site. The Enforcement database is a listing of CAOs and violations issued to facilities by various state environmental programs including Air, Hazardous Waste, Regulated Storage Tanks, Solid Waste and Water. This particular reference is to the CAO issued to Kearney in relation to the contaminated soils on the property which have subsequently been remediated. Groundwater remediation is on going.

PERMITS (Permits Data System)

The Kearney Property was identified as a PERMITS site. This database lists sites permitted by various ADEQ environmental programs, including Air, Mining, Solid Waste and Water. The PERMITS listing for Kearney appears to be for hazardous waste and water. The hazardous waste listing identifies "68 LBS GENERATED IN 2006 AND SHIPPED IN 2007."

The water permitting information in the PERMITS listing indicates that a National Pollution Discharge Elimination System (NPDES) permit was issued to the facility for stormwater runoff. A subsequent PERMITS listing, under "Kearney National Inc." indicates that the NPDES permit has since been voided and is no longer required.

In addition to the Kearney Property, the EDR environmental database indicated that regulatory information is available for the following properties within the ASTM Search Distance:

Standard Register Company 3655 South School Avenue

The Standard Register facility is listed as an AST (Above Ground Storage Tank) site. The database indicates that the capacity of the AST is 4,030 gallons, is made of steel with copper piping and was installed in 1989. However, the contents and use of the tank is not reported.

The Standard Register Company, which is located west of the Kearney Property (across Highway 71), is listed as a Conditionally Exempt Small Quantity Generator (CESQG) of hazardous waste. A CESQG normally generates 100 kg or less of hazardous waste per calendar month and accumulates 1,000 kg of hazardous waste at any time. Ignitable Hazardous Wastes (D001), are addressed under Standard Register's status as a CESQG.

The Standard Register Company is listed as a FINDS site. The FINDS database contains both facility information and "pointers" to other sources of information that contain more detail. The EDR search includes the Arkansas Permit Data System, National Emissions Inventory, US EPA Toxic Release Inventory System, National Pollutant Discharge Elimination System, RCRA information and the Permit Compliance System.

Fayetteville Armory
3590 South School Street

The Fayetteville Armory is listed as a RCRA-CESQG site. The Fayetteville Armory property is located directly north and adjacent to the Kearney Property. CESQG sites are conditionally exempt small quantity generators of hazardous wastes. The database indicates that this facility generates small quantities of Ignitable Hazardous Wastes (D001).

The Fayetteville Armory is listed as having an AST on the property. The tank's capacity is 8,000 gallons and is of steel, double wall construction. The tank was apparently installed in 1997; however, its contents and use are not reported.

The Fayetteville Armory is also listed as a FINDS site. The FINDS database contains both facility information and "pointers" to other sources of information that contain more detail. The EDR search includes the Arkansas Permit Data System, National Emissions Inventory, US EPA Toxic Release Inventory System, National Pollutant Discharge Elimination System, RCRA information and the Permit Compliance System.

EZ Mart #102
3608 South School Street

This facility is listed as a Leaking Tank site (LTANKS). The EZ Mart is located north of the Kearney Property, but is not an adjoining property. A leak was documented in the database as occurring in 1992. The apparent cause was vandalism which resulted in gasoline product flowing from a nozzle across the facility parking lot to a nearby storm sewer. The parking lot and sewer were subsequently cleaned and a No Further Action letter was issued to the facility by ADEQ in 1996.

A second incident is documented as occurring in 1996; a tank at the EZ Mart failed a tightness test which was reported to ADEQ. A second tightness test indicated that the tank's integrity was acceptable and ADEQ issued a No Further Action letter for this incident.

A third incident at the EZ Mart, also in 1996, indicates that a line leak caused gasoline product to surface through seams in the concrete and flow across the parking lot. After several respondents took action, the incident was deemed to have no completed exposure pathways and ADEQ issued a No Further Action letter in December 1996.

Further information in the database for the EZ Mart indicates that three additional tank tightness failures, all of which were subsequently repeated with passing results.

ORPHAN SITES

Eleven facilities were not mapped by EDR due to inadequate location information. These facilities are listed in the database for review. None of these orphan sites are adjoining properties and are therefore not considered to have any potential for environmental impact on the Kearney Property.

ON LINE ADEQ RECORDS SEARCH

LRC conducted an updated on line records search on the ADEQ web page. The on line search indicated that the Kearney Property and Cooper Power Systems have been issued permits under the ADEQ Hazardous Waste and Water Division programs. The ADEQ web page listed an inactive Hazardous Waste Generator Permit for the remediation project for the contaminated soil and groundwater on site. The Water Division program permit is an NPDES permit; however, the ADEQ database indicates that this permit was voided by the agency in 2006.

4.0 INTERVIEWS

LRC interviewed Mr. John Rose, Manager of Purchasing for Cooper at the Plant. Mr. Rose stated that the operational changes at the facility since the Phase I ESA was conducted in October 2008 consisted of the following:

- A new compressor has been purchased.
- The assembly areas have been re-configured.
- The forklifts have been upgraded.

Mr. Rose further stated that recycling of process materials remains unchanged.

Ms. Denise Georgiou, the Industrial Pretreatment Coordinator for the City of Fayetteville, was interviewed by LRC with respect to wastewater discharge issues at the Kearney Property. Ms. Georgiou stated that since the metal plating operations at the plant had been discontinued, a discharge permit for the city sanitary sewer system was no longer required.

Ms. Robin Reed, Director of the Washington County office of Environmental Affairs was interviewed by LRC. Ms. Reed stated that her agency has no records on file with respect to the Kearney Property.

5.0 UPDATED ENVIRONMENTAL LIEN SEARCH

An updated environmental lien search was conducted by EDR on behalf of LRC. The updated lien search included research of available land title documents recorded at jurisdictional agencies such as recorders' offices, registries of deeds, county clerks' offices, etc.

The EDR lien search found a warranty deed on file with the Washington County Clerk's office. The deed conveyed the subject property from the Fayetteville Chamber of Commerce, Inc. to Kearney National, Inc., and is dated April 4, 1972. The 1972 deed states that it is a replacement for a deed involving the same parties dated January 6, 1969, which had been misplaced, lost or destroyed prior to being recorded. The lien search did not produce any other deeds regarding the subject property. No environmental liens were found for the Kearney Property. A copy of the lien search documentation is located in Appendix E.

6.0 SITE RECONNAISSANCE

LRC performed an updated site inspection of the Kearney Property and surrounding properties on February 2, 2010. The objective of the inspection was to obtain information indicating any new recognized environmental conditions in connection with the subject property and surrounding properties. No new RECs were identified in connection with the subject property or the surrounding properties.

LRC interviewed plant personnel and was provided with a detailed tour of the plant and grounds. Photographs were taken by LRC with notes being recorded and incorporated into this report.

7.0 FINDINGS

LRC has performed this Phase I ESA Update in accordance with accepted ASTM standards. No new RECs were revealed during the Phase I ESA Updated conducted by LRC; however, LRC would rate the Kearney Property as having a high environmental concern due to past contamination of the site prior to 1997 when Kearney was still in operation at this location. This rating is based on the following RECs identified during the site assessment process:

- Kearney has been pursuing an environmental investigation and clean up at the subject property since 1997. The investigation and clean up activities are a result of a release of hazardous materials (chlorinated solvents) from metal degreasers as well as from a release from a former above ground gasoline storage tank (AST) to the soil and groundwater on the subject property during past operations conducted by Kearney. Soil remediation was completed in 2006; however, groundwater remediation is on going.

- Subsurface soil samples have indicated elevated concentrations of TCE; groundwater samples indicated levels of TCE in excess of MCLs for drinking water. TCE is a cleaning solvent and was commonly used during past operations by Kearney. It was not used by Cooper. TCE and its daughter compounds have subsequently been identified as the COCs at the Kearney Property.
- Asbestos Containing Materials have been identified at the Kearney Property. All ACM have been reported as being in "good" condition.

8.0 CONCLUSIONS

We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527 of 3660 South School Street, Fayetteville, Arkansas, the Kearney-National, Inc. Property. This assessment revealed no new evidence of recognized environmental conditions (RECs) in connection with the Property except for the following historical RECs:

- Kearney has been pursuing an environmental investigation and clean up at the subject property since 1997. The investigation and clean up activities are a result of a release of hazardous materials (chlorinated solvents) from metal degreasers as well as from a release from a former above ground gasoline storage tank (AST) to the soil and groundwater on the subject property during past operations conducted by Kearney. Soil remediation was completed in 2006; however, groundwater remediation is on going.
- Subsurface soil samples have indicated elevated concentrations of TCE; groundwater samples indicated levels of TCE in excess of MCLs for drinking water. TCE is a cleaning solvent and was commonly used during past operations by Kearney. It was not used by Cooper. TCE and its daughter compounds have subsequently been identified as the COCs at the Kearney Property.
- Asbestos Containing Materials have been identified at the Kearney Property. All ACM have been reported as being in "good" condition.

9.0 RECOMMENDATIONS

Based on the findings of this Phase I ESA, LRC has observed and/or recommends the following:

- Cooper should continue to pursue the ADEQ Brownfield Program process in order to obtain a release of liability for past contamination caused by Kearney, if Cooper ultimately purchases the Kearney Property.

- Cooper Power Systems, LLC is conducting its warehousing and assembly operational practices in a manner that will avoid causing contamination.
- Cooper Power Systems, LLC is maintaining the condition of ACM in the facility; ACM should be replaced as necessary utilizing qualified outside contractors, and appropriate plant personnel should be adequately trained in the applicable asbestos regulations.

10.0 LIMITATIONS OF REPORT

There is no information contained in this report regarding an evaluation of hazards associated with radon gas, wetlands, lead in drinking water, indoor air pollution, electromagnetic fields, mold or other fungi or anything not mentioned in the specific scope of work.

LRC has performed this work under the Scope of Work and ASTM E-1527-05; no guarantees are either expressed or implied.

LRC assumes that all information provided to LRC during this work is correct. This report is for the sole use of Cooper and may not be reproduced without written consent of LRC. Unless site conditions change, this document is valid for 180 days according to the ASTM E-1527-05 Standard and has been prepared solely for the use of Cooper. Any reliance on this report by other parties without written consent of Cooper and LRC is not permitted.

11.0 STATEMENT OF ENVIRONMENTAL PROFESSIONAL

Environmental Professional Statement: I declare that, to the best of my professional knowledge and belief, I meet the definition of Environmental Professional as defined in Section 312.10 of 40 CFR 312 and I have the specific qualifications based on education, training and experience to assess a property of the nature, history and setting of the subject Property. I have developed and performed all the appropriate inquiries in conformance with standards and practices set forth in 40 CFR Part 312.

Signature:

M. Jean Koeninger, P.G.

**KEARNEY-NATIONAL, INC. PROPERTY
FAYETTEVILLE, ARKANSAS
COMPREHENSIVE SITE ASSESSMENT-REVISED**

1.0 EXECUTIVE SUMMARY

The Land Recycling Company, Inc. (LRC) was retained by Cooper Power Systems, LLC (Cooper) to prepare a Comprehensive Site Assessment (CSA) of the Kearney-National, Inc. Property ("the Kearney Property") located at 3660 South School Street in Fayetteville, Washington County, Arkansas. Kearney is a subsidiary of the Dyson-Kissner-Moran Corp. A Phase I Environmental Site Assessment (ESA) was performed by LRC in October 2008; an Updated Phase I ESA was completed by LRC in February 2010 for ADEQ review and approval.

Kearney-National, Inc. (Kearney) has been pursuing an environmental investigation and clean up at the subject property since 1997. The investigation and clean up activities are a result of a release of hazardous materials (chlorinated solvents) and gasoline from a former above ground storage tank (AST) to the soil and groundwater on the subject property during past operations conducted by Kearney from 1954 to June 1997, when Cooper Power Systems, Inc. ("CPS") purchased the business, but not the property. Cooper discovered the release as part of its Phase II soil and groundwater investigation work performed by HSI GeoTrans, Inc. in 1997. Kearney entered into a Consent Administrative Order (CAO) with the Arkansas Department of Environmental Quality (ADEQ) regarding the clean up of on site soils and groundwater in August 2000 (LIS 00-138). According to a review of available records, the soil remediation was completed in 2005 with ADEQ's approval; the groundwater remediation is on going with Kearney proposing a Monitored Natural Attenuation Plan (MNAP) in January 2006, and semiannual groundwater monitoring for five years approved by ADEQ. The five year MNA monitoring period expires the end of 2010.

Cooper is currently leasing only the structure and the land's surface for assembly and warehousing of components used in the power supply (electric fuses and breakers) industry. Cooper has entered the Arkansas Department of Environmental Quality ("ADEQ") Brownfield Program so that it may qualify for the protection offered by the program should it ultimately purchase all or part of the Kearney Property. On January 25, 2010 ADEQ approved Cooper's Letter of Intent and Brownfield's application for purchasing the Kearney property.

The Fayetteville Executive Airport, which is located directly adjacent to the south of the Kearney Property, has expressed an interest in purchasing the southern 6.5 acres of the Kearney Property so that Earnest Lancaster Drive can be relocated so that it will be out of the airport runway safety zone. The 6.5 acre tract is open land, surrounded by a chain link fence, and is not occupied by any plant structures (other than groundwater monitoring wells) or plant operations.

Cooper has an option to purchase the entire Kearney Property but plans on contracting to acquire the 6.5 acre tract immediately to accommodate the Fayetteville Executive Airport expansion activities and explore its options to purchase the remaining property. Operations on the remainder of the Kearney Property will remain unchanged for the foreseeable future.

The information contained in this report, which includes available ADEQ documentation, interviews and assessment work performed by Kearney and Cooper, presents a comprehensive view of the environmental conditions at the Kearney Property, both past and present. Documentation prepared by Kearney indicates there are no known exposure pathway receptors associated with the Kearney Property.

Based on the content of this report, it is our conclusion that the planned sale and redevelopment of the southern 6.5 acre tract by the Fayetteville Executive Airport will not present an unacceptable risk to human health and/or the environment. It is our understanding that Kearney will continue to work with ADEQ under the 2000 CAO to monitor the groundwater in 2010 as part of the five year MNAP. In 2011, Kearney will summarize the MNAP results for the five year period and recommend additional monitoring and/or remedial action, as necessary.

2.0 INTRODUCTION

2.1 Site and Project Identification

The Land Recycling Company, Inc. (LRC) was retained by Cooper Power Systems, LLC (Cooper) to prepare a Comprehensive Site Assessment (CSA) of the Kearney-National, Inc. Property ("the Kearney Property") located at 3660 South School Street in Fayetteville, Washington County, Arkansas. Kearney is a subsidiary of the Dyson-Kissner-Moran Corp. A Phase I Environmental Site Assessment (ESA) was performed by LRC in October 2008; an Updated Phase I ESA was completed by LRC in February 2010 for ADEQ review and approval. A Site Location Map is presented as Figure Number 1 in Appendix A.

Kearney-National, Inc. (Kearney) has been pursuing an environmental investigation and clean up at the subject property since 1997. The investigation and clean up activities are a result of a release of hazardous materials (chlorinated solvents) and gasoline from a former above ground storage tank (AST) to the soil and groundwater on the subject property during past operations conducted by Kearney from 1954 to June 1997, when Cooper Power Systems, Inc. ("CPS") purchased the business, but not the property. Cooper discovered the release as part of its Phase II soil and groundwater investigation work performed by HSI GeoTrans, Inc. in 1997. Kearney entered into a Consent Administrative Order (CAO) with the Arkansas Department of Environmental Quality (ADEQ) regarding the clean up of on site soils and groundwater in August 2000 (LIS 00-138). According to a review of available records, the soil remediation was completed in 2005 with ADEQ's approval; the groundwater remediation is on going with Kearney proposing a Monitored Natural Attenuation Plan (MNAP) in January 2006, and semiannual groundwater monitoring for five years approved by ADEQ. The five year MNA monitoring period expires the end of 2010.

Cooper is currently leasing only the structure and the land's surface for assembly and warehousing of components used in the power supply (electric fuses and breakers) industry. Cooper has entered the Arkansas Department of Environmental Quality ("ADEQ") Brownfield Program so that it may qualify for the protection offered by the program should it ultimately purchase all or part of the Kearney Property. On January 25, 2010 ADEQ approved Cooper's Letter of Intent and Brownfield's application for purchasing the Kearney property.

2.2 Planned Site and Project Development

The subject property is approximately 19 acres in size and is shaped like an inverted "L". The subject property includes an approximate 135,000 square foot electrical equipment assembly facility, offices and an approximate 30,000 square foot warehouse. Two parking lots are also located on the Kearney Property.

The Fayetteville Executive Airport, which is located directly adjacent to the south of the Kearney Property, has expressed an interest in purchasing the southern 6.5 acres of the

Kearney Property so that Earnest Lancaster Drive can be relocated so that it will be out of the airport runway safety zone. The 6.5 acre tract is open land, surrounded by a chain link fence, and is not occupied by any plant structures (other than groundwater monitoring wells) or plant operations.

Cooper has an option to purchase the entire Kearney Property but plans on contracting to acquire the 6.5 acre tract immediately to accommodate the Fayetteville Executive Airport expansion activities. Operations on the remainder of the Kearney Property will remain unchanged for the foreseeable future. A proposed property acquisition map is presented as Figure Number 2 in Appendix B.

2.3 Participants in the Site and Project

Kearney-National, Inc. currently owns the subject property. Cooper is the prospective purchaser of the Kearney Property; but is interested in immediately contracting to purchase the southern 6.5 acres of the Kearney Property to accommodate the Fayetteville Executive Airport expansion activities.

2.4 Objectives of the CSA

The objective of this CSA is to satisfy the requirements of the ADEQ Brownfield Program so that Cooper, as the prospective purchaser, may qualify for the protection offered by the program should Cooper and the Airport consummate a deal to purchase 6.5 acres of the Kearney Property for airport expansion and the remainder of the property at such time as Cooper may exercise its option. This CSA summarizes the environmental investigation data that has been generated in relation to the Kearney Property, to date, so that a comprehensive report is presented to ADEQ for review. No new environmental investigation or sampling is planned as part of this CSA as agreed to by ADEQ.

3.0 INTENDED LAND USE

3.1 Previous Site Use

Records indicate that Kearney began operations at the subject property in 1954. Former Kearney plant operations included metal plating, tin dipping and lead fusing.

Prior to Kearney's ownership, property records indicate that the vacant land was owned by the Fayetteville Chamber of Commerce, Inc.

In 1997, Cooper purchased the equipment, but not the real property, from Kearney. Cooper has leased the structures and land surface from Kearney since 1997 for the assembly and warehousing of components used in the electrical power supply industry.

3.2 Current Institutional Controls

Current easements on the Kearney Property include an easement along the western side associated with U.S. Highway 71.

3.3 Past and Current Land Use Controls

The Kearney Property is currently zoned I-1 by the City of Fayetteville. This designation is for heavy commercial/light industrial. The surrounding properties are also zoned I-1, with the exception of the Miller property to the east, which is zoned for agricultural purposes.

The August 2000 CAO with ADEQ requires that Kearney provide a copy of the CAO to any prospective purchasers, lessees, or successors and a notice of the CAO is to be placed on the deed of the Kearney Property at the time of any transfer of ownership.

3.4 Future Planned Use

Cooper is currently leasing the structure and the land's surface for assembly and warehousing of electrical fuses and breakers. This current land use (which occurs on approximately 12.5 of 19 acres) of the Kearney Property will remain unchanged for the foreseeable future.

The Fayetteville Executive Airport, which is located directly adjacent to the south of the Kearney Property, has expressed an interest in purchasing the southern 6.5 acres of the Kearney Property so that Earnest Lancaster Drive can be relocated so that it will be out of the airport runway safety zone.

4.0 SITE DESCRIPTION

4.1 Location

4.1.1 Site Location and Legal Description

The Kearney Property is located at 3660 South School Street in the southeastern part of Fayetteville, Arkansas, in roughly the central part of Washington County, Arkansas. A General Site Plan is presented as Drawing Number 1 in Appendix C.

A legal description along with a property survey is presented in Appendix D. This document contains information about the Kearney Property itself as well as an adjacent strip of land to the north which the Kearney Property encroaches upon. This strip of land is identified on the property survey as "National Guard Property to be Obtained." The legal description for the main part of the Kearney Property is as follows:

Part of the NE ¼, SW ¼ of Section 33, T-16-N, R-30-W in Washington County, Arkansas and being more particularly described as follows: Commencing at the NE Corner of said NE ¼, SW ¼ thence S00°04'39"W 329.46 feet to the POB: thence S00°04'39"W 329.45 feet, thence N89°59'29"W 660.56 feet, thence S00°05'33"W 657.82 feet, thence S89°59'06"W 641.53 feet, thence N01°51'35"E 464.73 feet, thence S89°44'09"W 10.05 feet, thence N01°31'30"E 522.73 feet, thence N89°59'18"E 1284.70 feet to the POB: Containing 19.3 acres more or less subject to easements and R/W of record.

The legal description for the adjacent strip of land to the north upon which the Kearney Property encroaches is as follows:

Part of the NE ¼, SW ¼ of Section 33, T-16-N, R-30-W in Washington County, Arkansas and being more particularly described as follows: Commencing at the NE Corner of said NE ¼, SW ¼ thence S00°04'39"W 308.43 feet to the POB: thence S00°04'39"W 21.03 feet, thence S89°59'18"W 1284.70 feet, thence N01°31'30"E 14.80 feet, thence N89°42'37"E 1284.36 feet, to the POB: Containing .53 acres more or less subject to easements and R/W of record.

4.1.2 Topography

A review of the most current United States Geological Survey (USGS, Fayetteville, Arkansas, 1995) topographic map indicates that the elevation of the Kearney Property is approximately 1,254 feet above mean sea level (msl). The topographic gradient in the study area generally slopes to the south; the Kearney Property is situated within an intervening valley typical of the Ozark Mountains region. A copy of a portion of the topographic map depicting the study area is presented in Appendix E as Figure Number 3.

4.1.3 Contaminant Exposure Pathways

Documentation prepared by Kearney indicates there are no contaminant exposure receptors associated with the Kearney Property. The two media affected by the past release of contaminants at the site are soil and groundwater. According to the review of ADEQ records, the remediation of the soil was completed in 2005 with ADEQ approval; groundwater MNA remediation is on going. However, no groundwater receptors currently exist. The Kearney Property and surrounding properties are supplied by water from the City of Fayetteville, which obtains its municipal water from Beaver Lake. Sampling in a nearby creek to the south and in a pond on the adjacent property to the southeast (currently Scurlock Industries) was performed by Kearney's consultant to assess any impact on ecological receptors. Neither the creek nor the pond was determined to have been impacted by the contamination at the Kearney Property. The pond on the Scurlock Industries property has subsequently been filled in, thus eliminating the associated exposure pathway.

4.2 Current Conditions

4.2.1 Size of Site and Current Use

The Kearney Property is approximately 19 acres in size and is shaped like an inverted "L". The land surface and structures are currently leased by Cooper for assembling electrical switchgear, fusing equipment, tools and connectors. The structure contains a machine shop, assembly area, small wastewater treatment plant, administrative offices, shipping and receiving.

4.2.2 Surface Property Improvements

The Kearney Property includes an approximate 135,000 square foot electrical equipment assembly facility, administrative offices and an approximate 30,000 square foot warehouse. The manufacturing portion of the facility is comprised of a concrete foundation, concrete block walls and metal roofing which is covered with foam insulation and rubber. Two parking lots are also located on the subject property. The subject property is surrounded by chain link fence and has a secure gated entrance on South School Street.

Nitrogen and hydrogen tanks, which are located on the north east exterior of the manufacturing plant, are used in an interior annealing oven. The annealing process is utilized for softening of metals before they are worked in the various assembly processes.

Two sets of electrical transformers, which are the responsibility of Southwest Energy Power Company (SWEPCO), are located at the Kearney Property. Three pole-mounted transformers are located on the eastern exterior of the facility. A pad-mounted transformer is located on the northwest exterior of the administrative office portion of the facility (LRC, 2008).

4.2.3 Subsurface Property Improvements

According to a review of ADEQ records and interviews with on site personnel, there are currently no tanks, tank piping or production wells located on the Kearney Property.

4.2.4 Site Utilities and Location

Electrical power lines are situated "overhead" at the Kearney Property. Major utility, water and sewer lines are located along side and parallel to U.S. Highway 71 to the immediate west of the Kearney Property.

4.2.5 Topography and Surface Water Flow Paths

The Kearney Property is located within the Ozark Mountains region of Arkansas which is characterized by eroded plateaus (hills) and intervening valleys. The topography of the subject property is relatively flat as it is located in a valley.

A review of the most current United States Geological Survey (USGS, Fayetteville, Arkansas, 1995) topographic map indicates that the elevation of the Kearney Property is approximately 1,254 feet above mean sea level (msl). The topographic gradient generally slopes to the south. Surface water flows toward an unnamed tributary south of the Kearney Property.

4.2.6 Photographs

Photographs of the Kearney Property and surrounding properties are presented in Appendix F.

4.3 Surrounding Land Use & Environmental Conditions

4.3.1 Adjoining Properties

During the Phase I ESA and Phase I ESA Update process, LRC observed the properties which currently adjoin the Kearney Property. The Phase I ESA and Phase I ESA Update reports are presented in Appendices G and H, respectively. Following is a list of current adjoining property and their uses:

- | | |
|------------|--|
| North: | The adjacent property to the north of the subject property is occupied by the Fayetteville Armory. |
| East: | The adjacent property to the east of the subject property consists of McCollum Road and thence vacant agricultural property. |
| South: | The adjacent property to the south of the subject property is Drake Field and its runway system. |
| Southeast: | The adjacent property to the southeast of the subject property consists of Scurlock Industries (formerly known as EnviroSearch Company d/b/a Tri-State Pre-Cast). Both TCE and petroleum hydrocarbons were detected in groundwater samples collected by Kearney on the Scurlock Industries property. The extent of TCE contamination on Scurlock was not assessed due to property access restrictions imposed by the owner of the property at that time. Petroleum hydrocarbon compounds were also detected on the Scurlock property, but were determined to not be attributable to the Kearney Property. It should be noted that there are currently no |

known groundwater receptors associated with the Kearney Property

West: Property to the west consists of South School Street (U.S. Highway 71) thence The Standard Register Company.

4.3.2 Adjacent Properties with Possible Environmental Conditions

During the Phase I ESA process, including the update of the Phase I ESA, two of the properties which adjoin the Kearney Property were identified in LRC's search of available federal and state environmental records. Following is a description of each property in relation to available environmental records.

Standard Register Company 3655 South School Avenue

The Standard Register facility is listed as an AST (Above Ground Storage Tank) site. The database indicates that the capacity of the AST is 4,030 gallons, is made of steel with copper piping and was installed in 1989. However, the contents and use of the tank is not reported.

The Standard Register Company, which is located west of the Kearney Property (across Highway 71), is listed as a Conditionally Exempt Small Quantity Generator (CESQG) of hazardous waste. A CESQG normally generates 100 kg or less of hazardous waste per calendar month and accumulates 1,000 kg of hazardous waste at any time. Ignitable Hazardous Wastes (D001), are addressed under Standard Register's status as a CESQG.

The Standard Register Company is listed as a FINDS site. The FINDS database contains both facility information and "pointers" to other sources of information that contain more detail. The EDR search includes the Arkansas Permit Data System, National Emissions Inventory, US EPA Toxic Release Inventory System, National Pollutant Discharge Elimination System, RCRA information and the Permit Compliance System.

Fayetteville Armory 3590 South School Street

The Fayetteville Armory is listed as a RCRA-CESQG site. The Fayetteville Armory property is located directly north and adjacent to the Kearney Property. CESQG sites are conditionally exempt small quantity generators of hazardous wastes. The database indicates that this facility generates small quantities of Ignitable Hazardous Wastes (D001).

The Fayetteville Armory is listed as having an AST on the property. The tank's capacity is 8,000 gallons and is of steel, double wall construction. The tank was apparently installed in 1997; however, its contents and use are not reported.

The Fayetteville Armory is also listed as a FINDS site. The FINDS database contains both facility information and "pointers" to other sources of information that contain more detail. The EDR search includes the Arkansas Permit Data System, National Emissions Inventory, US EPA Toxic Release Inventory System, National Pollutant Discharge Elimination System, RCRA information and the Permit Compliance System.

4.4 Site Inspection

4.4.1 Methodology and Limiting Conditions

In October 2008 and in February 2010, LRC conducted site inspections at the Kearney Property for the Phase I ESA and the Phase I ESA Update, respectively. The Kearney Property and surrounding properties were inspected for the presence or evidence of recognized environmental conditions (RECs). Observations were noted in the field and photographs were taken, both of which were presented in the Phase I ESA and Phase I ESA Update reports. No limiting conditions were encountered.

4.4.2 General Site Setting

The Kearney Property is approximately 19 acres in size and is shaped like an inverted "L". The subject property includes an approximate 135,000 square foot electrical equipment assembly facility, offices and an approximate 30,000 square foot warehouse. Two parking lots are also located in the Kearney Property. Facility operations include a machine shop, assembly area, small closed loop wastewater treatment plant, administrative offices, shipping and receiving.

4.4.3 Exterior Observations

The assembly and warehouse portion of the Kearney Property is comprised of concrete block wall and metal roofing which is covered with foam insulation and rubber. The office portion of the facility has a brick exterior; the warehouse exterior is of metal construction. Two asphalt parking lots are located on the Kearney Property. A ditch runs between the plant building and the eastern parking lot. The Kearney Property is surrounded by chain link fence and has a secure gated entrance on South School Street (which is also known as U.S. Highway 71). A series of monitoring wells are located across the Kearney Property. Six injection wells are located within the former remediation area.

Nitrogen and hydrogen tanks, which are located on the northeast exterior of the facility, are used in annealing ovens located within the exterior of the facility.

Two sets of electrical transformers are located at the Kearney Property. Three pole-mounted transformers are located on the eastern exterior of the facility. A pad-mounted transformer is located on the northwest exterior of the administrative office portion of the facility.

A large, grass covered area on the eastern portion of the Kearney Property is the location of the soils remediation. Man made drainage ditches and utility chases are located to the west of the Kearney Property, parallel to South School Street.

4.4.4 Interior Observations

Major processes at the plant include assembly, shipping and warehousing. Interviews with plant personnel indicated that the plant building has had three additions over time.

Interior observations made by LRC during the Phase I ESA and Phase I ESA Update site inspections include the following:

- 12 x 12 tan, white & brown marble pattern floor tile in various office spaces
- Suspended ceiling tiles located in various areas within the office spaces and lavatories
- Finished goods area in plant
- Former cut out area in plant
- Various finished products including switches, aluminum connectors, block and wheel components
- Interior metal roof in plant
- Concrete floor in plant
- "Hi Line" electrical component assembly area
- "Hot Stick" assembly area
- Machine Shop
- Parts washer
- Wastewater treatment system
- Drummed chemical storage area
- Shipping and receiving areas
- Warehouse

5.0 ENVIRONMENTAL SETTING

5.1 Soils and Hydrology

5.1.1 Soils Description and Classification

Soils in this part of the Ozark Mountains region are characterized by unconsolidated deposits consisting of silty clays, clays, silt loams, stony sandy loams, and channery silty clay to the top of weathered shale (LRC, 2008).

5.1.2 Hydrology

5.1.2.1 Description of Lithological Units

Lithological units at the Kearney Property include approximately 18 feet of silty clay, underlain by up to 5.5 feet of weathered shale. The weathered shale is underlain by competent shale bedrock (HSI Geotrans, 1997).

5.1.2.2 Description of Groundwater

The depth to the shallow groundwater underlying the Kearney Property ranges from less than one foot to more than four feet below the surface. The uppermost confining layer consists of the Fayetteville Shale, which is locally 250 feet thick. Available groundwater data indicates that the groundwater flow in the shallow water bearing unit is toward the southwest (Burt Geology & Environmental Applications, PLLC, 2010).

5.2 Surface Water

5.2.1 Surface Water Flow Path/Nearest Surface Water Body

The topographic gradient generally slopes to the south. Surface water flows toward an unnamed tributary of the West Fork of the White River, which is located directly south of the Kearney Property.

5.2.2 100 Year Flood Plain Location

Based on information obtained during the Phase I ESA conducted by LRC, no 100 year flood plain areas are located within a one mile radius of the Kearney Property.

5.2.3 Potential Surface Water Receptors

There are no potential surface water receptors associated with the Kearney Property. The City of Fayetteville and the area surrounding the Kearney

Property are supplied municipal water from Beaver Lake, which is located in the northern part of Washington County and in Benton County.

According to information obtained during the Phase I ESA, there are no recreation areas or conservation areas within the vicinity of the Kearney Property.

5.3 Ecology

5.3.1 On Site and Off Site Plant and Animal Populations

Identification of site specific plant and animal populations has not been conducted at the Kearney Property due to a lack of any ecological exposure pathways and the lack of any sensitive animal or plant life receptors on site. Typical to the Ozark Mountains Physiographic Region is a forest belt of oak, hickory and pine. Arkansas' native animals include 15 varieties of bat, and three each of rabbit and squirrel. Common throughout the state are mink, armadillo, white tailed deer and eastern chipmunk. Black bear commonly roam the mountain regions of Arkansas. Among the 300 native bird species are eastern wild turkey, mourning dove and bobwhite quail. Common native fish include catfish, gar and paddle fish. Arkansas has 20 species of frogs and toads; 23 varieties of salamander and 36 kinds of snakes (City-Data.com, 2010).

5.3.2 Sensitive or Endangered Plant or Animal Species

Identification of site specific sensitive or endangered plant or animal species has not been conducted at the Kearney Property due to a lack of any ecological exposure pathways and the absence of any sensitive receptors. There are currently six listed endangered species in Washington County, Arkansas (U.S. Fish & Wildlife Service, 2010). These species include the Ozark Big Eared Bat, Florida Panther, Missouri Bladderpod, Gray Bat, Indiana Bat, Cave Crayfish, Neosho Mucket and the Arkansas Darter. Habitats suitable to these species do not occur on or adjacent to the Kearney Property.

5.3.3 Protective Areas

No protective areas such as wetlands, wildlife refuges, flood plains, scenic rivers or parks were identified during the Phase I ESA or Phase I ESA Update (LRC, 2008, 2010).

6.0 SITE HISTORY

6.1 Operational History

6.1.1 Business Description

Records indicate that Kearney began operations at the subject property in 1954. Former Kearney plant operations include metal plating, tin dipping, solvent degreasing and lead fusing associated with the electrical equipment manufacturing business.

In 1997, Cooper purchased the equipment, but not the real property, from Kearney. Cooper has leased the structures and land surface from Kearney since 1997 for the assembly and warehousing of components used in the power industry.

6.1.2 Products Produced and Materials Used

Current operations by Cooper at the Kearney Property consist of the assembly and warehousing of components used in the power industry. Materials used by Cooper in current operations include:

- Water-based Lubricants
- Synthetic Lubricants
- Cleaners & Degreasers (Soap only, no chlorinated solvents)
- Gear Oil
- Petroleum Hydrocarbon Cleaner
- Hydraulic Oil
- Metal Working Fluid
- Nitrogen
- Blastoff Part O (potassium hydroxide solution)
- Blastoff Part B
- Valcool (metal working oil fluid concentrate)
- Simple Green All Purpose Cleaner & Scrubbing Pad
- Petroleum Hydrocarbon Solvent
- Chevron Elite-Cut Metal Working Fluid
- Citgo Hydraulic Oil
- Tide Granular Laundry Detergent
- Parks Gum Turpentine
- High Calcium Hydrated Lime
- Acetylene
- Hydrogen
- Oxygen
- Coagulant for Wastewater Treatment

Products produced by Cooper's operations at the Kearney Property include electrical fuses and breakers, hand cutters, taps, terminals, splices and single phase switches (LRC 2008).

6.2 Ownership History

6.2.1 Real Estate and Property Ownership History

The Kearney Property is currently owned by Kearney-National, Inc. Prior to Kearney's ownership, property records indicate that the vacant land was owned by the Fayetteville Chamber of Commerce, Inc.

In 1997, Cooper purchased the equipment, but not the real property, from Kearney. Cooper is currently leasing only the on site structures and the land's surface (LRC, 2008, 2010).

6.3 Past Environmental Regulatory Involvement

6.3.1 Permits, Licenses and Certificates

The search of environmental records conducted during the Phase I ESA and Phase I ESA Update indicated that Kearney historically had four permits. The first permit was a National Pollutant Discharge Elimination Permit (NPDES) which was required during the period when plant operations involved metal plating. The metal plating operations ceased before Cooper began its current lease in 1997. The NPDES permit has since been voided by ADEQ (LRC, 2008, 2009).

The Kearney Property also historically operated under a waste water discharge permit with the City of Fayetteville before metal plating operations ceased. This permit is no longer active (LRC, 2008, 2010).

The Phase I ESA process also indicated that the Kearney Property operated under a Resource Conservation and Recovery Act (RCRA) Treater, Storer, or Disposal Facility (TSDF) permit during the site soil remediation project. The RCRA TSDF permit has been changed to "non-generator" status, indicating that the soil remediation project is complete pursuant to ADEQ's approval and no longer generating hazardous waste (LRC 2008, 2010).

6.3.2 Investigation and Inspection Reports

The initial Phase II environmental investigation at the Kearney Property was conducted by HSI GeoTrans in 1997 on behalf of Cooper when they purchased the equipment at the site, but not the real property.

HSI GeoTrans installed twelve subsurface soil borings using a direct push device. Five "grab" groundwater samples were collected from the borings using

temporary piezometers. Trichloroethylene (TCE) was detected in all of the soil samples and in two of the groundwater samples. These two groundwater samples indicated levels of TCE in excess of Maximum Contaminant Levels (MCLs) for drinking water. TCE is a cleaning solvent and according to records reviewed was commonly used during past operations by Kearney. Gasoline Range Organics (GRO) were also detected in all soil samples, two of which exceeded state-established standards for Total Petroleum Hydrocarbons (TPH). TCE and its daughter compounds have subsequently been identified as the Contaminants of Concern (COCs) at the Kearney Property. A copy of the HSI GeoTrans report is located in Appendix I. Cooper required that Kearney report the release and data to ADEQ.

As a follow up to the initial GeoTrans investigation, Kearney contracted with FTN Associates (FTN) to conduct additional field investigations at the subject property in March 1998. The additional work by FTN again indicated the presence of TCE, benzene and other chlorinated solvents which in some wells exceeded the established MCLs for drinking water; some concentrations of chlorinated compounds indicated the possible presence of Dense Non-Aqueous Phase Liquids (DNAPLs). Again, both soils and shallow groundwater were determined to have been impacted. A former AST was determined to be the source of the benzene and GRO in groundwater and soil; the tank was subsequently removed by Kearney.

In April 1998 Kearney began meeting voluntarily with ADEQ regarding environmental conditions at the subject property. Additional delineation of the contamination was performed by FTN, including sampling in a nearby creek and on the EnviroSearch/Tri-State property, which was located directly adjacent to the Kearney Property to the southeast (currently the location of Scurlock Industries). Neither the creek nor EnviroSearch/Tri-State was determined to have been impacted by the contamination at the Kearney Property.

Kearney and ADEQ subsequently entered into a CAO in August 2000 which outlined the regulatory, legal and timing issues of the remediation to be performed at the subject property. The CAO required that Kearney submit a Site Investigation (SI) Report, Remedial Alternatives Analysis (RAA) Report, and Remedial Action Plan (RAP) Application. All of these documents were submitted to ADEQ in December 2000. The SI Report, RAA Report and RAP Application are presented in Appendices J, K and L, respectively.

Based on the known presence of TCE and its degradation products in the shallow groundwater beneath the site, Kearney conducted an air sampling investigation in 2009. Air sampling was performed both inside and outside of the plant building. The objective of this study was to sample the indoor air of the building to determine if TCE and its degradation products 1,1-dichloroethylene (1,1-DCE), cis-1,2-dichloroethylene (cis-1,2-DCE), trans-1,2-dichloroethylene (trans-1,2-DCE), and vinyl chloride (VC) were present at levels that pose a health concern.

The U.S. Environmental Protection Agency (USEPA), the Occupational Safety and Health Administration (OSHA) and the American Conference of Governmental Industrial Hygienists (ACGIH) establish workplace exposure concentrations that serve to protect the safety and health of workers. Each of these established concentrations consider a typical work scenario (8 hours a day/40 hours a week).

The air sampling conducted at the Kearney Property indicated that the detected concentrations of TCE and cis-1,2-DCE in indoor air were below established guidelines and standards. The reporting limits for all of the non-detected chemicals were also below the established guidelines and standards. In conclusion, the results indicate that the levels of TCE and cis-1,2-DCE are below established guidelines and standards. Other chlorinated solvents were not detected in indoor or outdoor air. Based on these results and a comparison to current air standards and guidelines, TCE and its degradation products do not pose a health concern to workers at the Kearney building. The air sampling investigation report is presented in Appendix M.

A Phase I ESA and Phase I ESA Update were conducted by LRC in 2008 and 2010, respectively.

6.3.3 Current and Past Environmental Response Activities

Agency records indicate that Low Temperature Thermal Desorption (LTTD) remediation of approximately 6500 cubic yards of VOC contaminated soils at the subject property was completed in November 2005. The remediation consisted of excavation of two areas east of the eastern most parking lot; one area of excavation was beneath a former concrete pad (140 ft x 60 ft x 12.5 ft deep) and the second area of excavation (35 ft x 35 ft x 16 ft deep) was formerly used to dispose of clay residues. The depth of excavation was determined by the depth of the shale layer beneath the property. In addition, concrete areas were decontaminated, screening materials unacceptable for LTTD were characterized and disposed of off-site, LTTD treated soils were backfilled onsite, waste pile areas were lined underneath, LTTD and all equipment was decontaminated prior to leaving the site, and the LTTD never exceeded 250 tons per hour to stay below the 10 lb/hr VOC permit exemption. ADEQ required Kearney to obtain financial assurance and a RCRA permit to implement this remediation work. A Closure Plan was submitted to ADEQ on March 15, 2002, pursuant to the voluntary cleanup CAO addressing the decontamination monitoring and cleanup of the LTTD unit and excavation equipment used to excavate the soils (LRC, 2008).

Excavated soils were treated on the subject property via LTTD. The established clean up goal was five milligrams per kilogram (mg/kg) TCE. Treated soils were subsequently backfilled on the subject property and the excavated areas have been graded and seeded. Approximately 98,000 gallons of excavation water was

treated through carbon filtration and discharged under a NPDES permit (LRC, 2008).

Kearney had initially proposed remedial action for the contaminated groundwater at the Kearney Property consisting of the injection of chemicals that will enhance the natural attenuation process. Injection wells have been installed for this purpose; however, no actual injection of the enhancement materials had occurred at the time of this report (LRC, 2008).

A Monitored Natural Attenuation Plan (MNAP) was submitted by Kearney and approved by ADEQ in 2006. The MNAP requires periodic groundwater sampling and data collection by Kearney. Specifically, the site monitoring wells are to be sampled semi-annually for volatile organic compounds (VOCs) and annually for key natural attenuation parameters for five years following the soil remediation work. The MNAP is presented in Appendix N.

The fourth of five annual groundwater monitoring reports required by the MNAP was submitted to ADEQ in January 2010 (Burt Geology and Environmental Applications, PLLC, 2010). The January 2010 Annual Groundwater Monitoring Report is presented in Appendix O. The fifth annual groundwater monitoring will be completed in 2010 and a final report is expected to be issued to ADEQ in January 2011 by Kearney.

6.3.4 Legal Actions

Kearney and ADEQ entered into a CAO in August 2000 which outlined the regulatory, legal and timing issues of the remediation to be performed at the subject property. The CAO required that Kearney submit a Site Investigation (SI) Report, Remedial Alternatives Analysis (RAA) Report, and Remedial Action Plan (RAP) Application. The CAO outlined protection to subsequent property owners. The CAO is presented in Appendix P.

6.4 Interviews

As part of the Phase I ESA in 2008, LRC interviewed Mr. Downie Grim, Cooper Power Systems Plant Manager at the Kearney Property. Mr. Grim has been at the plant since 2006. He indicated that the major plant processes currently include assembly, machine shop, shipping and receiving. Assembled items include line installation products for electrical processes and power poles. Examples of the assembled products are hand cutters, taps, terminals and splices. Most of the assembly is by hand, with some automation. Mr. Grim stated that the Kearney plant originally opened in the 1950's and that in the 1990's operations were taken over by Cooper Power Systems.

Mr. Grim indicated that the current use of chemical products at the plant include machine lube oil and soap for parts washing. He indicated that Material Safety Data Sheets (MSDS) were available for LRC review.

Mr. Grim stated that there were no underground storage tanks currently on the Kearney Property. The plant utilizes the local municipal water supply and sanitary sewer system. He could not recall any spills or leaks associated with plant processes other than the past Kearney operations which resulted in the soil and groundwater contamination currently being remediated by Kearney. Mr. Grim knew of no fires that had occurred at the plant.

LRC also interviewed Mr. Roger Baird, the Supervisor of Tool & Die, Maintenance and Productions Supervisor at the Kearney plant. He provided LRC with a completed tour of the Kearney Property. Mr. Baird has been employed at the plant since 1996.

Mr. Baird stated that the major processes at the plant include assembly, shipping and warehousing. Mr. Baird indicated that the plant has had three additions over time. He reiterated that components for single phase switches are shipped to their Mexico facility. Some of the components also come from China, according to Mr. Baird.

Mr. Baird stated that during the former Kearney plant operations, wastewater discharge from the plating operation was permitted; however, those operations were never used by Cooper and were moved to another Kearney facility. The waste water currently generated by Cooper's plant operations is recycled, thus making the discharge permit unnecessary. Former Kearney plant operations included metal plating, tin dipping and lead fusing. All former floor drains were sealed by Cooper with the exception of the sinks and toilets in the lavatories.

Mr. Baird provided LRC with a detailed description of the parts washer used in the plant. The parts washer uses soap in the cleaning process. Wash water and rinse water is re-used for three to four weeks, depending on the parts washed in the process. Then, the used water is filtered and placed in an oil-water separator with a skimmer. Any collected oil is drummed and removed for off-site disposal. The used water is then placed in a settling tank where fines and sludge are collected. The water is then placed in a holding tank and subsequently treated with aluminum chloride and lime, followed by a polymer solution for reuse.

Mr. Baird stated that he was not aware of any underground storage tanks on the Kearney Property. He indicated that there are two sets of transformers on the subject property, both of which are approximately seven years old. He was not aware of any testing for PCBs and that any incidents related to the transformers would be the responsibility of SWEPCO.

Municipally-supplied water is used for cooling machinery; however, the water is "jacketed" and never touches the machinery so it is not considered a wastewater. Cooling water is also used in the parts finishing process but is recycled.

Chemicals used in plant operations which were observed by LRC in an interior chemical storage area include:

- Water-based Lubricants
- Synthetic Lubricants
- Cleaners & Degreasers (Soap only, no chlorinated solvents)
- Gear Oil
- Petroleum Hydrocarbon Solvent
- Hydraulic Oil
- Metal Working Fluid

After the site visit, plant personnel provided LRC with MSDS sheets for the following chemicals used in the plant processes:

- Nitrogen
- Blastoff Part O (potassium hydroxide solution)
- Blastoff Part B
- Valcool (metal working oil fluid concentrate)
- Simple Green All Purpose Cleaner & Scrubbing Pad
- Petroleum Hydrocarbon Cleaner
- Chevron Elite-Cut Metal Working Fluid
- Citgo Hydraulic Oil
- Tide Granular Laundry Detergent
- Parks Gum Turpentine
- High Calcium Hydrated Lime
- Acetylene
- Hydrogen
- Oxygen
- Coagulant for Wastewater Treatment

In addition to plant personnel, LRC interviewed Ms. Jane Spellman, who is the project manager for Kearney on the remediation of soils and groundwater at the Kearney Property. Ms. Spellman is a Vice President and Senior Hydrogeologist with FTN Associates, Inc. (FTN).

Ms. Spellman stated that the environmental investigation began in 1997. TCE is the contaminant of concern (COC) along with some of its degradation products. High concentrations of contaminants have been detected in the vicinity of the southeast corner of the plant; Ms. Spellman informed LRC that, according to anecdotal evidence, the contamination in this area may have come from 55-gallon drums of spent degreaser which were placed outside so the liquids could evaporate.

Another area of high concentration of TCE is to the north of the southeast corner in what was formerly a pit. According to Ms. Spellman, anecdotal evidence indicates that this area of contamination may have resulted from the disposal of defective clay collars.

Ms. Spellman described other areas of contamination including TCE concentrations under the plant building which may have resulted from chemicals being disposed of on the ground surface over time; also, contamination on the eastern part of the Kearney Property may have resulted from a former septic tank. Ms. Spellman noted that, before environmental regulations were established, these types of disposal methods were common in manufacturing operations.

Ms. Denise Georgiou, the Industrial Pretreatment Coordinator for the City of Fayetteville, was interviewed by LRC with respect to wastewater discharge issues at the Kearney Property. Ms. Georgiou stated that since the metal plating operations at the plant had been discontinued, a discharge permit was no longer required.

Ms. Robin Reed, Director of the Washington County office of Environmental Affairs was interviewed by LRC. Ms. Reed stated that her agency has no records on file with respect to the Kearney Property.

During the Phase I ESA Update, LRC interviewed Mr. John Rose, Manager of Purchasing for Cooper at the Plant. Mr. Rose stated that the operational changes at the facility since the Phase I ESA was conducted in October 2008 consisted of the following:

- A new compressor has been purchased.
- The assembly areas have been re-configured for Lean improvements.
- The forklifts have been upgraded.

Mr. Rose further stated that recycling of process materials remains unchanged.

7.0 CONCLUSIONS

The information contained in this report, which includes available ADEQ documentation, interviews and assessment work performed by Kearney and Cooper, presents a comprehensive view of the environmental conditions at the Kearney Property, both past and present.

Documentation prepared by Kearney indicates there are no contaminant exposure receptors associated with the Kearney Property. The two media affected by the past release of contaminants at the site are soil and groundwater. According to the review of ADEQ records, the remediation of the soil was completed in 2005 with ADEQ approval; groundwater monitoring is on going. However, no groundwater receptors currently exist.

A Monitored Natural Attenuation Plan (MNAP) for groundwater was submitted by Kearney and approved by ADEQ in 2006. The MNAP requires periodic groundwater sampling and data collection by Kearney. Specifically, the site monitoring wells are to be sampled semi-annually for volatile organic compounds (VOCs) and annually for key natural attenuation parameters for five years following the soil remediation work.

The fourth of five annual groundwater monitoring reports required by the MNAP was submitted to ADEQ in January 2010. The fifth annual groundwater monitoring will be completed in 2010 and a final report is expected to be issued to ADEQ in January 2011 by Kearney.

The Fayetteville Executive Airport, which is located directly adjacent to the south of the Kearney Property, has expressed an interest in purchasing the southern 6.5 acres of the Kearney Property so that Earnest Lancaster Drive can be relocated so that it will be out of the airport runway safety zone. The 6.5 acre tract is open land, surrounded by a chain link fence, and is not occupied by any plant structures (with the exception of groundwater monitoring wells) or plant operations.

Cooper has an option to purchase the entire Kearney Property but plans on contracting to acquire the 6.5 acre tract immediately to accommodate the Fayetteville Executive Airport expansion activities and explore its options on the remaining Kearney property. Operations on the remainder of the Kearney Property will remain unchanged for the foreseeable future.

Based on the content of this report, it is our conclusion that the planned sale and redevelopment of the Kearney Property, especially the southern 6.5 acre tract by the Fayetteville Executive Airport will not present an unacceptable risk to human health and/or the environment. It is our understanding that Kearney will continue to work with ADEQ under the 2000 CAO to monitor the groundwater in 2010 as part of the five year MNAP. In 2011, Kearney will summarize the MNA results for the five year period and recommend additional monitoring and/or remedial action as necessary.

PROPERTY DEVELOPMENT PLAN
Kearney-National, Inc. Property
Fayetteville, Arkansas

I. INTRODUCTION

This Property Development Plan (PDP) is being prepared for the Kearney-National, Inc. ("KNI") property located at 3660 South School Street, Fayetteville, Washington County, Arkansas ("the Property" or "the Kearney Property") by Cooper Power Systems, LLC ("Cooper") of Houston, Texas. Cooper was approved by Arkansas Department of Environmental Quality ("ADEQ") into the Brownfields Program on January 25, 2010 under Arkansas Code Annotated ("ACA") & 8-7-1104(a) and qualifies as a prospective purchaser of the 4.81 acres ("Airport Tract") of Kearney Property for subsequent purchase and development by the City of Fayetteville ("City") into an airport facility tract. It is contemplated that Cooper will enter into a real estate contract to acquire the City Tract and then assign such Contract to the City who shall acquire the City Tract directly from KNI. The Kearney Property and the Airport Tract are described on the documents attached hereto as Exhibits A and B respectively.

Cooper has submitted and revised with technical comments received from ADEQ, as part of the requirements of the ADEQ Brownfield Program, a Phase I Environmental Site Assessment ("ESA") and a Comprehensive Site Assessment ("CSA"), prepared by The Land Recycling Company, Inc. ("LRC"). The Phase I ESA and the CSA were approved by ADEQ in March 2010 and April 2010, respectively in order to retain the applicants Comprehensive Environmental Response, Compensation and Liability Act liability relief under the All Appropriate Inquiry rule set for the in 40 CFR Part 312.

II. SITE DESCRIPTION

The site is a parcel located in the southeastern part of the City of Fayetteville approximately in the central part of Washington County, Arkansas. The Property was used historically for industrial purposes from approximately 1954 until the present. KNI conducted industrial operations at the Property from 1954 until 1997, when it leased the property to Cooper. KNI plant operations included metal plating, tin dipping, solvent degreasing, and lead fusing associated with the electrical equipment manufacturing business. In 1997 Cooper leased the Property from KNI for assembly and warehousing of components used in the electrical power industry and did not use any chlorinated solvents in its operation. The Property remains developed with an approximate 135,000 square foot electrical equipment assembly facility, and an approximate 30,000 square foot warehouse. Two parking lots are also located on the property.

III. PREVIOUS INVESTIGATIONS AND REMEDIATION

Since 1997, KNI, as the responsible party for the chlorinated solvent contamination and other contamination identified on the Property, has undertaken response actions at the site and in August 2000, entered into a Consent Administrative Order (CAO) with ADEQ, which outlined the regulatory, legal, and timing issues of the soil and groundwater removal and remediation activities completed and yet to be performed on the Property.

In conducting the CSA, LRC reviewed the sampling data compiled by KNI in connection with the work it was performing under the CAO. Based on the results of KNI's soil and groundwater sampling, trichloroethylene ("TCE") and other chlorinated compounds were detected in soil and ground water samples. Gasoline Range Organics ("GRO") were also detected in soil samples. Subsequent groundwater sampling in 1998 indicated the presence of TCE, benzene, and other chlorinated solvents which in some cases exceeded Maximum Contaminant Levels ("MCLs"). The 1998 sampling event again indicated that both soils and shallow groundwater were impacted. A former AST operated by Kearney was determined to be the source of the benzene and GRO in groundwater; TCE is a cleaning solvent, which was commonly used by KNI.

In 2005 extensive soil remediation was completed by KNI with ADEQ's approval. The groundwater remediation is on going process with KNI proposing a Monitored Natural Attenuation Plan ("MNAP") in January 2006, with semiannual groundwater monitoring for five years. The five year MNA monitoring period expires the end of 2010.

IV. HUMAN HEALTH & ECOLOGICAL RISK

Documentation prepared by KNI indicates that the only current exposure pathway, from a human health and ecological risk standpoint, is the vapor intrusion pathway from on-site groundwater for indoor on-site workers. However, indoor air sample results indicate contaminant concentrations in indoor air were well below established guidelines and standards.

V. PLANNED PROPERTY DEVELOPMENT

Planned development on the southern 4.81 acres of the Kearney Property ("the Airport Tract") by the City of Fayetteville consists of the expansion of the adjacent Fayetteville Executive Airport. The proposed airport expansion activities will include construction of a roadway (relocation of Lancaster Drive), rechanneling of a drainage ditch and the re-routing of underground water lines. The use of the remainder of the Kearney Property will remain unchanged for the foreseeable future. The attached drawing illustrates the planned development of the Airport Tract by the Fayetteville Executive Airport (McClelland Consulting Engineers, 2009).

VI. PROPOSED REMEDIAL ACTION

- A. Cooper will establish working with the City of Fayetteville and KNI, institutional controls on the airport tract through deed recordation of the following property restrictions and requirements which will run with the land:
1. Restricting usage of the Kearney Property solely to commercial/light industrial zoning regulations;
 2. Limiting the use of the Airport Tract to roadway purposes;
 3. Prohibiting the use of groundwater beneath the Kearney Property;
 4. Providing access to KNI so it may conduct the work contemplated by the CAO;
 5. Requiring that monitoring wells remain in place during any period required by ADEQ;
 6. Allow the City of Fayetteville to move or install at KNI's direction, one shallow downgradient well for volatile organic monitoring and plume definition;
 7. All soils generated by the City's contractors for the road construction and utility work will be disposed of off-site as nonhazardous; and
 8. Provide access for KNI and its representatives, including the ADEQ, for monitoring and conducting any remedial field work required by KNI to comply with the CAO.
- B. Cooper will coordinate with the City and cause KNI personnel to plant certain vegetative cover, plants and shrubs on the Airport Tract in order to seek to facilitate natural attenuation.
- C. Once the property development is finished by the City of Fayetteville and documented by their consultant, McClelland Consulting Engineers, Cooper along with the City of Fayetteville will ask for a Certificate of Completion from ADEQ.
- D. The Remedial Action described in this Article VI shall be the sole response action/remedial action required of Cooper and/or the City with regard to the Kearney Property and the City Tract.

Exhibit A

Kearney Property

Premises

The South Half (S/½) of the North Half (N/½) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way, which bounds the property on the West, containing 9.80 acres, more or less, Washington County, Arkansas and subject to the County Road right-of-way along the East Side thereof.

The Southwest Quarter (SW/¼) of the Northeast Quarter (NE/¼) of the Southwest Quarter (SW/¼) of Section 33, Township 16 North, Range 30 West, less that portion thereof located within the U.S. Highway No. 71 right-of-way which bounds the property on the West, containing 9.62 acres, more or less, Washington County, Arkansas.

Exhibit B

Airport Tract

DRAKE FIELD / HWY 71B

Tract No. 6
Parcel No. 765-15533-000

PROPERTY DESCRIPTION:

(Deed Record 830-628)

A part of the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section 33, T-16-N, R-30-W, as described in Deed Record 830-628 of the records of the Circuit Clerk, Washington County, Arkansas, being more particularly described as follows: From the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼), thence South 87°05'37" East along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) a distance of 20.09 feet to a point on the existing East Right of Way line of Arkansas Highway 71B for the Point of Beginning, thence North 4°35'50" East along said East Right of Way line a distance of 336.70 feet; thence leaving said East Right of Way line South 85°46'18" East - 630.94 feet to a point on the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the East line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) South 2°58'17" West - 322.00 feet to the Southwest corner of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼); thence along the South line of said Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) North 87°05'37" West - 640.34 feet to the Point of Beginning, containing 4.81 acres, more or less.

City of Fayetteville Staff Review Form

A. 10
McClelland Consulting Engineers
Task Order #2
Page 1 of 28

City Council Agenda Items
and
Contracts, Leases or Agreements

~~5/4/2010~~ **5/18/2010**
City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: Approve Task Order #2 with McClelland Consulting Engineers, Inc., Contact info: Wayne Jones, P.E., PO Box 1229, Fayetteville AR 72702-1229, 479-443-2377, Fax 479-443-9241, wjones@mccllelland-engrs.com.

\$ 12,300.00

Cost of this request

\$ -

Category / Project Budget

Airport Security Upgrade

Program Category / Project Name

5550.3960.5314.00

Account Number

\$ -

Funds Used to Date

Avi/ED Imp

Program / Project Category Name

\$ -

Remaining Balance

Airport

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

[Signature]
Department Director

4-13-10

Date

Previous Ordinance or Resolution #

R 139-08

[Signature]
City Attorney

4-14-10

Date

Original Contract Date:

Original Contract Number:

Paul A. Bush
Finance and Internal Services Director

5-5-2010

Date

Received in City
Clerk's Office



King.

[Signature]
Chief of Staff

5-5-10

Date

Received in
Mayor's Office



[Signature]
Mayor

5/3/10

Date

Comments: This project is eligible for a 80/20 grant from the Arkansas Department of Aeronautics.

CITY COUNCIL MEMO

To: Mayor Jordan

Thru: Chief of Staff, Don Marr

Thru: Transportation Director, Terry Gulley *TJH*

From: Ray M. Boudreaux, Aviation Director *RM*

Date: April 12, 2010

Subject: Approve Task Order #2 with McClelland Consulting Engineers to develop and bid the Airport Security Improvements Project For Fayetteville Executive Airport, Drake Field.

PROPOSAL: In July 2008 the City Council approved an Airport Security Improvements Project at Drake Field with the understanding that the Airport would be approved for an Arkansas Aeronautics 50/50 Grant to cover half of the costs of the project. At the time, Aeronautics was unable to fund our request so the item was never acted upon. Today, the Aeronautics has the funding available and has invited the City to apply for an 80/20 grant for the project.

The FAA has published guidance for Minimum Standards for General Aviation Airports Security. Although the guidance is not mandatory yet, it is understood that the standards will be mandatory soon. This project includes new gate controllers, RFID credentials for staff and those who work on the airport, and monitoring cameras that record activities on parking aprons and entry points. These areas are the only areas where Drake Field does not meet the minimum guidance published by the FAA. The Airport Board approved this project and our request at their April 8, 2010 meeting.

RECOMMENDATION: Approve Task Order #2 with McClelland Consulting Engineers to develop a scope of work and providing bidding services for the Airport Security Improvements Project at a total cost of \$12,300.00. With acceptable bids, the Airport staff will ask the City Council to approve a contract and application to the Arkansas Aeronautics Commission for grant funds to complete the project. Award of the project depends on approval of the grant request.

BUDGET IMPACT: This project is funded by an Arkansas Aeronautics 80/20 Grant. Total Project Costs including Engineering fees, is estimated to be between \$125,000.00 and \$170,000.00. The 20% match will come from the Airport Use of Funds Balance and will not exceed \$34,000.00.

Attachments: Staff Review
Budget Adjustment
Task Order #2

Project Accounting Request Form

Sent Budg 4/12/10
A/10
McClelland Consulting Engineers
Task Order #2
Page 3 of 28

Project Request:

Project Number : _____ (will be assigned by Budget)
Project Title (40 char) : Airport Security Upgrade 24
Project Status : Pending
Project Manager : Ray M Boudreaux
Responsible Division : Aviation & Economic Development (AVED)
Project Group : Project
Project Type : Aviation Improvements
Fiscal Start Mo./ Year : 04 / 2010

Sub Project Request:

Sub Project Number : _____
Sub Project Title : Design
Sub Project Status : Pending
Sub Project Manager : Ray M Boudreaux
Grant (Y/N) : Yes

GL Accounts Assigned:	REVENUE	5550.0955.6805.00
	EXPENSE	5550.3960.5314.00

Sub Project Request:

Sub Project Number : _____
Sub Project Title : Construction
Sub Project Status : Pending
Sub Project Manager : Ray M Boudreaux
Grant (Y/N) : Yes

GL Accounts Assigned:	REVENUE	5550.0955.6805.00
	EXPENSE	5550.3960.5804.00

Is this item going to Council? Yes Is a budget adjustment needed? Yes
If yes, please specify date: 5/4/2010

Ray M. Boudreaux
Requested By

Entered By

April 8, 2010

Mr. Ray Boudreaux
Airport Director,
Fayetteville Executive Airport
4500 S. School Suite F
Fayetteville, AR 72701

RECEIVED
APR 08 2010
AIRPORT

Re: Task Order No 2
Airport Access Security System
Fayetteville Executive Airport

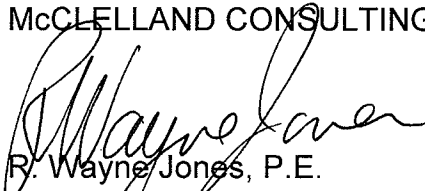
Dear Mr. Boudreaux:

In response to your request, please find three (3) copies of Task Order No 2 for the Airport Access Security System.

Please advise if you need further information regarding this Task Order.

Sincerely,

McCLELLAND CONSULTING ENGINEERS, INC.


R. Wayne Jones, P.E.
Vice President

Enclosure: Task Order No 2 (3 copies)

RESOLUTION NO. _____

A RESOLUTION APPROVING TASK ORDER #2 WITH MCCLELLAND CONSULTING ENGINEERS, INC. IN THE AMOUNT OF \$12,300.00 FOR DEVELOPMENT AND BIDDING OF THE AIRPORT SECURITY IMPROVEMENTS PROJECT AT FAYETTEVILLE EXECUTIVE AIRPORT-DRAKE FIELD AND APPROVING A BUDGET ADJUSTMENT

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 Task Order #2 with McClelland Consulting Engineers, Inc., a copy of which is incorporated herein as if set out word for word and attached hereto as Exhibit "A," in the amount of \$12,300.00 for development and bidding of the Airport Security Improvements Project at Fayetteville Executive Airport-Drake Field.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a budget adjustment, a copy of which is incorporated herein as if set out word for word and attached hereto as Exhibit "B," in the amount of \$12,300.00.

PASSED and APPROVED this 4th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**TASK ORDER NO. 2
AIRPORT SECURITY IMPROVEMENTS
FAYETTEVILLE EXECUTIVE AIRPORT**

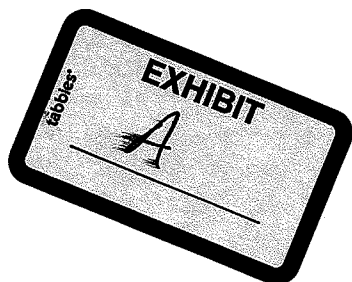
STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on May 5, 2009. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Executive Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville and McClelland Consulting Engineers (MCE) sets forth the project description, project schedule, and engineering fees related to the Airport Security Improvements, Drake Field.

SECTION I - PROJECT DESCRIPTION

The project is to consist of the Airport Security Improvements, including the work scope in the attached Scope of Services. The services to be performed include: Preliminary Design; Detailed Design; Cost Estimates; Bidding Assistance; Construction Administration; and Construction Observation.



SECTION II - PROJECT SCHEDULE

From the time the City of Fayetteville issues the Notice To Proceed (NTP), McClelland Consulting Engineers, Inc. will endeavor to execute the project within the following time periods:

<u>Task</u>	<u>Completion After NTP</u>
A. Access Security System Design	21 calendar days

SECTION III - SCOPE OF SERVICES

McClelland Consulting Engineers, Inc. shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, the project is likely to include:

- A. Access Security System and all necessary components as follows:
 - a. Master Control Panel and accessories including: proximity readers for four gates, gate controller located near master controller, power modules, cabling as necessary and software.
 - b. Video surveillance including: Fixed position video surveillance cameras for each gate, at main terminal tarmac, and at fire department (8 minimum locations), digital video recorder(s), lightning protection, and power supply.
 - c. Lighting at each gate entrance for security designed for video recording footcandle levels at each gate.
 - d. New gate controllers/motor operators at existing gates.
 - e. Remote unlock station located in terminal building.
 - f. Electrical power and data circuits as required. Includes all conduit and cable as necessary with the understanding is to use wireless devices where practical to avoid cutting patching of existing tarmac.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to McClelland Consulting Engineers, Inc. as compensation for his services:

A. Project Coordination:	a lump sum of	\$ <u>1,250.</u>
B. Engineering Design, Cost Estimates, Bidding Assistance Const Admin., Const Obs. (bi-weekly):	a lump sum of	\$ <u>6,800.</u>
C. Bidding Service:	a lump sum of	\$ <u>750.</u>
D. Reimbursement Expenses:	Estimated to be	\$ <u>1,500.</u>
E. Const. Material Testing	Estimated to be	\$ <u>2,000.</u>
F. Additional Services (as needed)	To Be Determined	

Appendices A & B presents Hourly and Unit Price Fee Schedule for personnel anticipated to be assigned to this project and the possible materials testing by McClelland Consulting Engineers, Inc. and their Consultant *Engineering Elements, PLLC*.

SECTION V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly
executed as of the date and year first herein written.

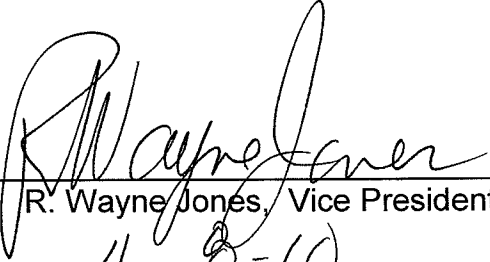
FOR THE CITY OF FAYETTEVILLE:

By: _____
Lioneld Jordan, Mayor

Attest: _____

Date: _____

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: 
R. Wayne Jones, Vice President

Attest:  _____

Date: 4-8-10

**APPENDIX A
TASK ORDER NO.2
Hourly Rates for Personnel
Fayetteville Executive Airport**

<u>CATEGORY</u>	<u>BILLABLE HOURLY RATE RANGE</u>
Project Director	\$145 to \$160
Project Manager	\$120 to \$150
Project Engineer	\$90 to \$130
Design Engineer II	\$85 to \$110
Design Engineer I	\$75 to \$90
Registered Surveyor	\$80 to \$100
Computer Technician	\$60 to \$85
Senior Engineering Technician/Observer	\$65 to \$75
Engineering Technician/Observer	\$75 to \$95
Junior Engineering Technician	\$45 to \$70
Survey Crew (2 man)	\$135 to \$150
Clerical Support	\$45 to \$55
CADD Technician III	\$65 to \$80
CADD Technician II	\$55 to \$70
CADD Technician I	\$45 to \$55
Soils Lab Supervisor	\$60 to \$70
Soils Technician II	\$45 to \$55
Soils Technician I	\$35 to \$45

APPENDIX B CONSTRUCTION MATERIALS LABORATORY FEE SCHEDULE TASK ORDER NO. 2

GENERAL:

Laboratory Field Technician *	\$ 42.00 per hour
Laboratory Engineering Technician *	50.00 per hour
AHTD-Qualified Technician*	52.00 per hour
Engineering Technician *	60.00 per hour
Senior Engineering Technician	90.00 per hour
Lab Supervisor	60.00 per hour
Mileage	0.50 per mile
Consultation:	
Lab Supervisor	60.00 per hour
Field Engineer	90.00 per hour
Project Engineer	100.00 per hour
Project Manager	150.00 per hour
Principal Engineer	155.00 per hour
Lab Report Preparation (per report)	48.00 per hour

SOILS:

AHTD-Qualified Field Technician	52.00 per hour
Soils Field Technician (1-hour minimum)	42.00 per hour
In-Place Compaction Test-Nuclear Gauge ASTM D 2922	
Sample Pickup, or Stand-by Time	
Nuclear Density Gauge Fee: (per Density Test); [Minimum \$15.00 per trip, per project]	10.00 each
Liquid Limit, Plastic Limit, Plasticity Index (3 point) ASTM D 4318	50.00 each
Sieve Analysis-Washed No. 200 (Wet) ASTM D 1140	35.00 per sieve
Sieve Analysis-Dry ASTM D 422	8.00 per sieve
Hydrometer Analysis ASTM D 422	90.00 each
Specific Gravity ASTM D 854	50.00 each
Soils Classification, Unified or AASHTO ASTM D 2487 or AASHTO M 145	110.00 each
Laboratory Maximum Compaction Test ASTM D 698 or AASHTO T 99	130.00 each
Laboratory Maximum Compaction Test ASTM D 1557 or AASHTO T 180	145.00 each
Potential Volume Change-Swell Pressure	100.00 each
California Bearing Ratio-CBR ASTM D 1883 (3 point) (Proctor curve additional)	150.00 each
Shrinkage ASTM D 427	50.00 each
Soil Bearing Capacity (Engineering Tech., 2-hour minimum)	60.00 per hour
Non-ASTM Procedures Available On Request	

CONCRETE:

Concrete Mix Design	Price on Request
Review Concrete Mix Design (Lab Supervisor)	60.00 per hour
Confirm Concrete Mix Design	Price on Request
Concrete Field Technician * (1-hour minimum): [For any of the following 6 items:]	42.00 per hour
• Concrete Cylinder or Beam Molding ASTM C 31	
• Concrete Cylinder or Beam Pickup	
• Concrete Slump Test ASTM C 143	
• Concrete Air Content Test ASTM C 231 or C 173	
• Cement Mortar or Group Sampling	
• Stand-by Time	
Unit Weight and Yield of Freshly Mixed Concrete ASTM C 138	50.00 each
AHTD-Qualified Concrete Technician: (1-hour minimum), [For any of the foregoing 6 items:]	52.00 per hour
Compressive Strength of Concrete Test Cylinders ASTM C 39 (pad cap)	18.00 each
Compressive Strength of Concrete Test Cylinders ASTM C 39 (sulfur capped)	35.00 each

* ACI Grade I Concrete Field Testing Technician

APPENDIX C CONSTRUCTION MATERIALS LABORATORY FEE SCHEDULE TASK ORDER NO. 1

CONCRETE (Continued):

Spare Cylinders Specimens Processed but not Tested	15.00 each
Schmidt Hammer Testing (Engineering Tech, 2-hour minimum)	60.00 per hour
Flexural Strength of Concrete Beams ASTM C 78 or C 293	50.00 each
Spare Beam Specimens Processed but not Tested	40.00 each
Compressive Strength of Grout Cubes	40.00 each
Compressive Strength of Cement Mortar Cubes	25.00 each
Concrete Coring (3" or 4"):	
Core Machine & Lab Technician	80.00 per hour
Additional Lab Technician, as required	42.00 per hour
Compressive Strength of Concrete Cores (3" or 4")	40.00 each
Other Core Sizes	Price on Request
Aggregate Sieve Analysis:	
Dry Sieve ASTM C 136	8.00 each
Wet Sieve ASTM C 117	35.00 each
Fineness Modules	25.00 each
Decantation	35.00 each
Deleterious Materials	60.00 each
Specific Gravity and Absorption of Aggregate ASTM C 127 & C 128	90.00 each
Dry Rodded Unit Weight of Aggregate ASTM C 29	75.00 each
Sodium or Magnesium Sulfate Soundness (5 cycles) ASTM C 88	350.00 each
Additional Cycles	50.00 each

ASPHALT:

Asphalt Mix Design (Marshall Design Method)	Price on Request
Review Asphalt Mix Design (Sr. Engr. Technician)	90.00 per hour
Asphalt Field Technician	
In-Place Compaction Test-Nuclear Gauge (Lab Technician)	42.00 per hour
Sample Pickup	42.00 per hour
Marshall Test including Stability, Flow, Laboratory Density, Percent Air Voids,	
Percent Voids in Mineral Aggregate (3 specimens per test)	400.00 each
Extraction including percent Bitumen and Aggregate Gradation	325.00 each
Laboratory Density of Cored Plugs including Depth Measurement	30.00 each
Asphalt Coring (3" or 4"):	
Core Machine & Lab Technician	80.00 per hour
Additional Lab Technician, if required	42.00 per hour
Sample Pickup	42.00 per hour

FIREPROOFING:

Unit Weight, Bonding Strength, Thickness and Sampling (actual time required for Lab Technicians)	50.00 per hour/Tech.
Report Preparation (Lab Supervisor)	60.00 per hour

STRUCTURAL STEEL:

Bolt Torque Testing: Lab Technician(s)	50.00 per hour
Field Engineer	100.00 per hour
Pneumatic Torque Wrench Calibration (twice per day)	50.00 each
Visual Weld Inspection Field Engineer	100.00 per hour

Services not Listed are Available on Request
All prices are subject to revision each year

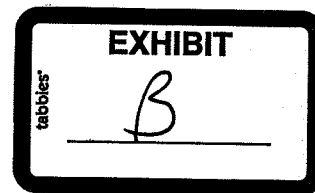
**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 10
McClelland Consulting Engineers
Task Order #2
Adjustment Number

Budget Year 2010 2009	Department: General Government Division: Aviation & Economic Development Program: Airport Capital Expense	Date Requested 5/18/2010 5/4/2010	Task Order #2 Adjustment Number
---	---	---	------------------------------------

Project or Item Added/Increased: \$12,300 in the Professional Services Account.	Project or Item Deleted/Reduced: None. Increase Airport Use of Fund Balance \$12,300
--	---

Justification of this Increase: Will provide a design specification for bidding and construction. Firm bids are necessary for the application to AR Dept Aeronautics for grant funding.	Justification of this Decrease: The project is eligible for 80/20 grant funding from the AR Dept of Aeronautics. 80% of the project expense will be paid with grant funding.
--	---



Increase Budget				Amount		Project Number	
Account Name	Account Number						
Professional Services	5550	3960	5314	00	12,300	10023	1

Decrease Budget				Amount		Project Number	
Account Name	Account Number						
Use of Fund Balance	5550	0955	4999	99	12,300	10023	1

V.090403

[Signature] 5/4/10
Division Head Date

[Signature] 5-5-2010
Budget Director Date

[Signature] 5/5/10
Department Director Date

[Signature] 5-5-2010
Finance Director Date

[Signature] 5/5/10
Chief of Staff Date

Budget & Research Use Only

Type: A B C D E

Requested By _____

General Ledger Date _____

Posted to General Ledger _____

Initial _____ Date _____

RESOLUTION NO. 139-08

A RESOLUTION AUTHORIZING THE FAYETTEVILLE EXECUTIVE AIRPORT STAFF TO APPLY FOR A GRANT IN THE AMOUNT OF \$68,235.00 FROM THE ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND AN AIRFIELD SECURITY 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 authorizes the Fayetteville Executive Airport staff to apply for a grant in the amount of \$68,235.00 from the Arkansas Department of Aeronautics to fund an Airfield Security Project.

PASSED and APPROVED this 1st day of July, 2008.

APPROVED:

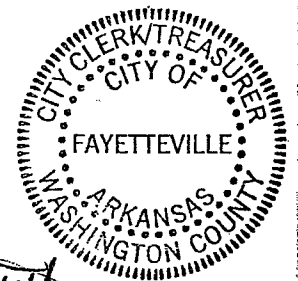
ATTEST:

By:

Dan Coody
DAN COODY, Mayor

By:

Sondra E. Smith
SONDRA E. SMITH, City Clerk/Treasurer



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

7/1/2008

City Council Meeting Date

RES
7/1/08
139
Arkansas
Dept. of
Aeronautics

Ray M. Boudreaux

Submitted By

Aviation & Economic Development

Division

General Government

Department

Action Required:

Action Required: Approve a grant application to the Arkansas Department of Aeronautics; Contact: John Knight, Director; One Airport Drive, Third Floor, Little Rock, AR 72202, 501-376-6781.

Revenue

\$ 68,325.00

Cost of this request

5550.0955.6805.00

Account Number

NEW

Project Number

\$ 2,250.00

\$ -
Funds Used to Date

\$ 2,250.00

Remaining Balance

Contrib

Program Category / Project Name

Airport Revenue

Program / Project Category Name

Airport

Fund Name

Budgeted Item

Budget Adjustment Attached

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Service Director

Date

Mayor

Date

Received by Clerk's Office

Received in Mayor's Office

Comments:

City Council Meeting of: July 1, 2008
Agenda Item Number:

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor and Members of the City Council

THRU: Staff/Contract Review Committee

FROM: Ray M. Boudreaux, Director, Aviation and Economic Development

DATE: June 12, 2008

SUBJECT: Approval of Airport Security Project at Fayetteville Executive Airport, Drake Field and Grant application to the State of Arkansas Aeronautics Commission and acceptance of grant proceeds when approved by the State of Arkansas. Signature of the Mayor

RECOMMENDATION: Approve Airport Security Project at Drake Field and application and acceptance of a State Aeronautics Commission 50/50 Grant for the project. Signature of the Mayor

BACKGROUND: The FAA continues to encourage airports, especially those that are certified for passenger carrying aircraft, to improve airfield security. Fayetteville Executive Airport, Drake Field is fenced and access is controlled by the people that work at the airport. There was a system when the airlines were located at the airport but as the system failed it was not repaired or replaced as the threat did not warrant the expense.

The more activity we generate and the more people that work on the field, the more essential is the need for a security system that protects the City of Fayetteville airport assets and access to the National Air Transportation System. One example is the cost of fuel and the bulk storage tanks that are located at the airport. They are secure and we keep a close eye on them, but we had rather be proactive than to try and catch up. The total value of the aircraft and the facilities on the field are well in excess of \$100,000,000.00.

The FAA provides a measurement tool for General Aviation Airports to self-evaluate their level of security. Fayetteville Drake Field rates in the 25-44 range with 34 points. This project provides for the enhancements required to upgrade our airport security to an acceptable level. The Airport Board recommended that we proceed with this project at their June 11 meeting.

BUDGET IMPACT: Due to limited available funding, the state has indicated that a 50/50 grant may be considered for this type of project. The match will be taken from the airport use of fund balance.

Attachments: Staff Review Form
State Aeronautics Commission Grant Application
Project overview
Airport Characteristics Measurement Tool

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE EXECUTIVE AIRPORT STAFF TO APPLY FOR A GRANT IN THE AMOUNT OF \$68,235.00 FROM THE ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND AN AIRFIELD SECURITY 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 authorizes the Fayetteville Executive Airport staff to apply for a grant in the amount of \$68,235.00 from the Arkansas Department of Aeronautics to fund an Airfield Security Project.

PASSED and APPROVED this 1st day of July, 2008.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

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



AVIATION & ECONOMIC DEVELOPMENT
FAYETTEVILLE MUNICIPAL AIRPORT • DRAKE FIELD

June 13, 2008

Mr. John Knight, Director
Arkansas Department of Aeronautics
One Airport Drive, 3rd Floor
Little Rock, Arkansas 72202

RE: GRANT APPLICATION, Airfield Security project

Dear Mr. Knight;

Enclosed please find two (2) copies of a grant application to Arkansas Department of Aeronautics for 50/50% match funding on a project to undertake an Airfield Security project at Drake Field.

Fayetteville Municipal Airport requests funding of the maximum amount of \$68,325 in Arkansas Department of Aeronautics funding. The City of Fayetteville will match the balance of the project cost. The total project cost is estimated at \$136,650.

Fayetteville Municipal Airport respectfully requests your consideration of this grant application, and to be included on the agenda of the Aeronautics Commission board meeting in July, 2008. Your assistance in this matter is greatly appreciated. Please contact me if you would like further information, or have any question concerning this application.

Sincerely,

Ray M. Boudreaux, Director
Aviation & Economic Development

RB:jn

Enclosures: 2\

Grant Application, 2 copies
Security project description and estimate of cost

State Airport Aid Application – Page 1

The City/County of Fayetteville, herein called "Sponsor", hereby makes application to the Arkansas Department of Aeronautics for State funds pursuant to Act 733 of 1977, for the purpose of aiding in financing a project for the development of a municipal airport located in the city of Arkansas, Washington county.

Date of Request: June 11, 2008

Name of Airport: Fayetteville Executive Airport / Drake Field (FYV)

Name and address of City/County Commission
sponsoring request:

City of Fayetteville
113 W Mountain
Fayetteville AR 72701

Phone Number: _____

Fax Number: _____

Person to Contact about project:

Ray M. Boudreaux
4500 S School Ave. Ste F
Fayetteville AR 72701

Phone Number: 479-718-7642

Cell Number: 479-601-3520

Fax Number: 479-718-7646

Name and address of Engineering Firm
(if applicable):

Contact Person: _____

Phone/Fax Number: _____

Describe the work to be accomplished: Comprehensive Airfield security improvements to include cameras & video record, RF proximity readers and ID cards, gate operators, wireless network and software.

State and Local Project Costs:
Please indicate:

50-50% Match

80-20% Match

90-10% Match

100%

Total Cost of Project	<u>136,650</u>
Local Share/Funds	<u>68,325</u>
Local Share/In-Kind	_____
State Share	<u>68,325</u>

Federal AIP Projects:

AIP Number: _____

95-5% Match

90-10% Match

Cost of Project:	_____
Federal Share:	_____
State Share:	_____
State Share:	_____

State Airport Aid Application – Page 2

Provide the information listed below as it applies to your project:

Funding:

Source of Funds:

State Funding: Arkansas Department of Aeronautics

Local Funding: City of Fayetteville – Airport fund

Source of In-Kind Services: N/A

Estimated starting date of project: July 2008

Estimated completion date of project: December 2008

Project will be for: New Airport ☒ Existing Airport

Is land to be leased or purchased? No

Description of land and cost per acre: N/A

Provide the Federal AIP Grant Number (if applicable): _____

State Legislators for your area:

State Senator: Sue Madison

State Representative: Marilyn Edwards & Lindsley Smith

State Airport Aid Application – Page 3

The sponsor agrees to furnish the Arkansas Department of Aeronautics a copy of the legal instrument affecting use of the property for an airport. In application for a new landing site or expansion of existing facility, the FAA Form 7480-1, *Notice of Landing Area Proposal*, must be approved by the FAA before review for grant can be made by the State. Applications for hangar construction or renovation funds must include a signed lease agreement. This agreement must be in compliance with all FAA grant assurances. The application must be based on bids and include a calculated return on investment.

No land, hangars, or buildings purchased with State Grant funds may be sold or disposed of without State Aeronautics Commission prior approval. All requests for sale or disposal of property will be considered on an individual case basis. No hangar (funded by a grant from the Department of Aeronautics) shall be used for non-aviation purposes without State Aeronautics Commission prior approval. All requests for non-aviation use will be considered on a case-by-case basis. Failure to receive prior approval from A.D.A. concerning land and/or building use could result in the commission requesting grant refund from the Sponsor.

No airport accepting State Grant funding may issue an Exclusive Rights lease.

All applications for navigational aids (such as NDB or ILS) must have FAA site approval before a state grant can be approved.

All Grant applications involving Federal Airport Improvement Program (AIP) funding must be accompanied by the approved FAA grant agreement with grant number assigned.

If this project is approved by the Arkansas Department of Aeronautics, and is accepted by the sponsor, it is agreed that all developments and construction shall meet standard FAA construction practices as outlined in the specifications of this agreement. Runways, Taxiways, Parking Ramps, etc. shall have a base and a thickness that will accommodate the weight of aircraft expected to operate at this airport.

All grant applicants (City and/or County) are totally responsible for compliance with all Federal, State, County, and City laws, Statutes, Ordinances, Rules, Regulations, and Executive Orders concerning contracts and purchases for which this grant is approved and issued.

It is understood and agreed that should the sponsor fail to start this project within three (3) months of the Arkansas Department of Aeronautics' date of acceptance, that this grant is null and void. It is also agreed that this project shall be completed within one year from the date of acceptance of this grant by the Arkansas Department of Aeronautics. Applications for extension will be entertained if circumstances beyond the sponsor's control occur.

Funds will be disbursed according to Department procedures and final inspection of completed project (See payment instruction page). Funds are contingent upon the Department's biennium appropriation.

IN WITNESS WHEREOF, the sponsor has caused this Application for State Airport Aid to be duly executed in its name, this 15th day of July, 2008.

City of Fayetteville

Name of Sponsor

Authorized Signature
Ray M. Boudreaux, Director

Title

APPLYING FOR PAYMENT OF APPROVED GRANT FUNDS

After your grant has been approved and you are ready for a partial or final payment, please provide the following documents to our office:

FOR 50-50%, 80-20%, 90-10% AND 100% STATE AIRPORT AID GRANTS, YOU MUST PROVIDE:

Letter requesting Payment (partial/final) stating completion of the project with the total amount of the project and the state share of the grant. Must be signed by City/County official or Airport Commissioner.

Invoices for all cash expenses (copies). Engineering estimates/payment requests or contracts are not acceptable to auditors and cannot be accepted by our agency.

Canceled checks to match all invoices – front and back of checks.

Copy of Deed, Title Insurance, Legal Fees (Land Purchases Only).

Daily time sheets for ALL in-kind work used as match for grant. The auditors will accept only ONE day of in-kind services on ONE Daily Report Form. The form must be filled out completely and signed by Supervisor and City/County Official. – No Exceptions!

An expense sheet outlining expenses/or a tape showing how the amount requested for payment was totaled.

FOR GRANTS MATCHING FEDERAL FUNDS, YOU MUST PROVIDE:

Letter requesting payment (final only) stating completion of the project. Must be signed by City/County Official or Airport Commissioner.

Copy of final Federal Aviation Administration Reimbursement Form (FAA form 271 or computer generated form accepted by the FAA).

NOTE: All City/County Airports participating in **Block grants** with the ADA must submit all payment requests to our office. The FAA will not process your payment of these grants.

WHAT YOU NEED TO RETAIN FOR YOUR FILES FOR AUDIT PURPOSES:

Original signed application requesting funds.

Letter of approval from State Office.

All amendment request/letter granting approval or denial of amendments.

Letter requesting payment (partial/final) or extension of time request for project.

All documents (originals) submitted to State office for final payment of grants.

Copy of State Warrant – Warrant is presented on final inspection and payment of grant.

A copy of plans, deeds or any documents submitted to State Office used for approval of grant.

If you have any questions concerning the process of submitting documentation for payment of your grant, please call our office at 1-800-376-6781. Ask for John Knight.

Fayetteville Municipal Airport, Drake Field Airport Security Project Overview

The City of Fayetteville is interested in receiving proposals to improve the security of its airport, Fayetteville Municipal Airport, Drake Field (FYV). The airport operates under FAR Part 139 regulations as a class IV airport. There are no scheduled airline flights into or out of the airport but commercial air carrier aircraft with more than 30 passenger seats may operate into and out of the airport with prior permission of Airport Administration. Prior notice is required in order to allow sufficient time to arrange for fire protection.

Drake Field operated as a commercial service airport until 1999 when the airlines relocated to the new Northwest Arkansas Regional Airport (XNA). All of Northwest Arkansas is supported by flights into and out of XNA. As a result, the airport is equipped with perimeter fencing and automatic vehicle gates. Old cameras and ramp lighting systems are mostly inoperative and in disrepair. The purpose of this RFP is to receive proposals from a single provider to make improvements to the following security systems:

- **Personal Identification System:** Develop and install personnel identification system for the Airport with system administration and encoding equipment in Airport Administration offices. Include personal photo identification badges which include RFID entry coding characteristics utilizing International Electronics Incorporated technology or equivalent.
- **Airport vehicle and personnel gates:** Install new and improved gate operating systems, lighting as necessary and card readers for entry and exit.
- **Airport surveillance cameras:** Install surveillance cameras on the three major West side parking aprons (the Terminal Apron, the Executive Apron, and the West Side GA Apron) and the Fuel Farm. Install surveillance cameras on selected east side movement areas (self serve fuel station, east side gate). Install surveillance cameras in the Terminal parking lot and main terminal entrances. Install up to 9 cameras utilizing Video Insight Digital Video Management Systems or equivalent with administration in the Airport Administration offices. Utilize wireless IR technology for cameras across the field if possible.
- **Install monitoring systems** at Airport Administration and Customer Service Desk.
- **Install alarm system** in the terminal building integrating the fire alarm system with the security alarm system.
- **Make recommendations** for additional security upgrades that will improve the overall airport security posture.

The successful proposal will include comprehensive description of how the security company will achieve each of the above security improvements and include a not to exceed dollar amount for completion of each provision. The City of Fayetteville is interested in contracting with a single company to provide the entire security package, Video, Personal Identification, and Entry Operation and Control. The City reserves the right to select the most comprehensive response to this request including acceptability of equipment and total cost of the project.



Fleming Network Services, Inc.

Your Total Solution Provider
P.O. Box 856 Bryant, AR 72089
(501) 847-9500 Fax: (501) 847-3598
<http://www.fleminc.com>
email: network@fleminc.com



RAY BOUDREAX
DRAKE FIELD
FAYETTEVILLE, AR

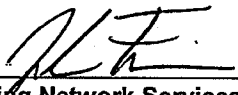
Sales Quotation

Quote # 000440
Project DRAKE FIELD SECURITY

Date 5/23/2008
Exp. Date 6/22/2008

Description	Price	Qty	Extend
PRICE FOR INSTALLING NEW SECURITY CAMERAS TO INCLUDE ALL OF THE FOLLOWING:			
LABOR:			
BUCKET TRUCK USAGE PER DAY	\$8,000.00		
ELECTRICAL POWER NEEDED FOR CAMERAS	\$880.00		
	\$3,250.00		
MATERIALS:			
(7) BOSCH FIXED DOME CAMERAS			
(2) BOSCH 18X PTZ DOME CAMERAS			
(1) BOSCH 36X PTZ DOME CAMERA			
(1) BOSCH DIBOS 22 CHANNEL 750GB DVR			
(1) 19-INCH COLOR LCD MONITOR			
(10) FIRETIDE HOTPORT OUTDOOR DUAL RADIO NODES			
(2) SECTOR ANTENNAS			
(10) SINGLE PANELS FOR CAMERA LOCATIONS			
(1) FIRETIDE HOTVIEW PROMESH MANAGEMENT SOFTWARE			
	\$64,540.76		
WIRE AND HARDWARE NEEDED FOR INSTALL:	\$6,135.19		
TOTAL PRICE FOR CAMERA INSTALLATION:	\$82,805.95	1	\$82,805.95
PRICE FOR INSTALLING NEW GATE CONTROLS TO INCLUDE ALL OF THE FOLLOWING:			
(3) 1HP DOORING SLIDE GATE OPERATOR WITH DC OPTION			
(2) WIEGAND PROXIMITY CARD READERS			
(2) WIEGAND PROXIMITY CARD READERS WITH TRACKER BOARDS			
(3) PROXMITTER RECIEVERS			

Description	Price	Qty	Extend
(1) 1838 PROGRAMMABLE CONTROLLER (1) CONTROL MATE RECIEVER (2) REMOTE MATE TRANSMITTERS (3) INFRAREDTHRU-BEAM PHOTO CELL (3) FIRE DEPT LOCK BOXES (1) 500 PERSON MEMORY CARD (3) HIGH VOLTAGE SURGE SUPPRESSORS (3) FAIL SECURE LOCK KITS (1) TRACKER BOARD ENCLOSURE (2) TRACKER BOARDS (1) RS232 CABLE (1) RS232 TO USB ADAPTER (1) 1200LB MAGNETIC LOCK (6) PLUG-IN 1 CHANNEL DETECTOR (10) PROXMITTER 1 BUTTON REMOTES (100) PROX CARDS ASSORTED WIRING, TRANSFORMERS, SEALANT, & MISC. MATERIALS	\$27,534.00		
MATERIALS: SAW BLADES-MULTICONDUCTOR WIRE-WIRE NUTS-BOLTS-ANCHOR BOLTS-CONDUIT-DRYWALL ANCHORS-CEMENT-CARFLEX-ASSORTED FITTINGS-SEALANTS-CABLE TIES-ETC.	\$5,160.00		
LABOR: APPROX 2-3 MEN 240 MAN HOURS@ \$40/HOUR	\$9,600.00		
6 HOURS TRAINING ON DOORKING SOFTWARE-THIS CAN BE DIVIDED INTO AS MANY AS 3 SESSIONS	\$250.00		
CLARIFICATIONS: 1. REPAIRS TO EXISTING UNDERGROUND CONDUIT WILL CHANGE THE QUOTED PRICE 2. ANY CHANGES ABOVE THE QUOTED MATERIAL OR LABOR MAY BE CAUSE FOR ADDITIONAL CHARGES 3. REPAIR OF EXISTING GATES, GUIDES, OR SLIDES WILL BE CAUSE FOR ADDITIONAL CHARGES			
TOTAL PRICE FOR GATE CONTROL INSTALLATION:	\$42,544.00	1	\$42,544.00

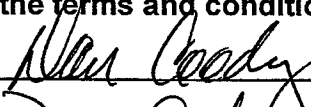
Authorized Signature: 
Fleming Network Services, Inc.

Sub-Total \$125,349.95

Shipping

Sales Tax \$11,281.50

I accept the terms and conditions of this quotation.

Signed: 

Total \$136,631.45

Name: Dan Coody Title: Mayor

Terms: 30 Day Draws. Balance Due Upon Completion/Delivery.

[] I decline my option for an extended service contract.

GA Airport Security

IP A-001

Appendix A – Airport Characteristics Measurement Tool

Security Characteristics	Assessment Scale	
	Public Use Airports/Heliports	Private Use Airports/Heliports
Location		
Within 30 nm of mass population areas ¹ 450,000	5 X	3
Within 30 nm of a sensitive site ² UA & Stadium	4 X	2
Falls within outer perimeter of Class B airspace	3	1
Falls within the boundaries of restricted airspace	3	1
Based Aircraft		
Greater than 101 based aircraft	3	1
26-100 based aircraft	2 X	-
11-25 based aircraft	1	-
10 or fewer based aircraft	-	-
Based aircraft over 12,500 lbs	3 X	1
Runways		
Runway length equal to or greater than 5000 feet	5 X	3
Runway length less than 5000 feet, Greater than 2001 Feet	4	2
Runway length 2000 feet or less	2	-
Asphalt or concrete runway	1 X	-
Operations		
Over 50,000 annual aircraft operations	4	2
Part 135 operations	3 X	1
Part 137 operations	3	1
Part 125 operations	3	1
Flight training	3 X	1
Flight training in aircraft over 12,500 lbs	4	2
Rental aircraft	4 X	2
Maintenance, Repair, and Overhaul facilities conducting long term storage of aircraft over 12,500 lbs	4 X	2
Total	34	

Assess points for every characteristic that applies to your facility.

1. Mass population area - Area with a total metropolitan population of at least 100,000 people.
2. Sensitive sites - Areas which would be considered key assets or critical infrastructure of the United States. Sensitive sites can include certain military installations, nuclear and chemical plants, centers of government, monuments and iconic structures, and/or international ports.
3. Facilities with multiple runways should only consider the longest runway on the airport.
4. Airports at higher elevations may need longer runways to accommodate even the smallest of aircraft. It is not the intent of this document to assess points for a longer runway if it is unrealistic that the runway could be used for larger aircraft operations.

AGENDA REQUEST

FOR: COUNCIL MEETING OF MAY 4, 2010

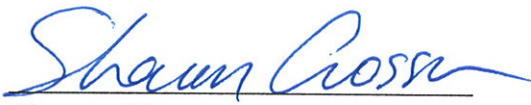
FROM:

LIONELD JORDAN, MAYOR

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend Chapter 72 **Parking Regulations** Of The Fayetteville Code To Enact Regulations For Nonconsensual Towing Of Vehicles Within The Entertainment District Parking Zone

APPROVED FOR AGENDA:



Sharon Crosson
Parking & Telecommunications
Manager

4-15-10

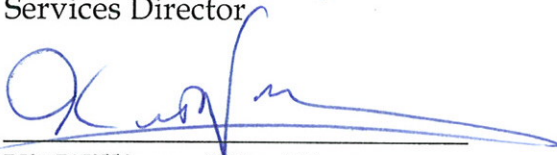
Date



Terry Gulley, Transportation
Services Director

4-15-10

Date



Kit Williams, City Attorney

April 14, 2010

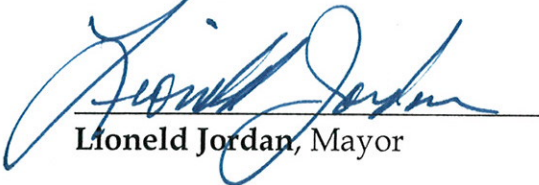
Date



Don Marr, Chief of Staff

4-19-10

Date



Lioneld Jordan, Mayor

4/19/10

Date

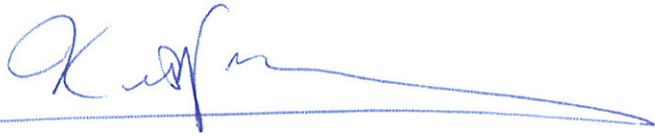


Left on First Reading at the 5/4/10 CC mtg.

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director
Terry Gulley, Transportation Services Director
Sharon Crosson, Parking & Telecommunications Manager

FROM: **Kit Williams**, City Attorney



DATE: **April 14, 2010**

RE: **Regulation of nonconsensual tows from private parking lots**

Thanks to Representative Lindsley Smith and Senator Sue Madison, the Arkansas Legislature amended A.C.A. §27-50-1101 to give cities increased power to regulate nonconsensual towing from private parking lots. I have attached part of that statute as well as A.C.A. §27-51-1305 concerning towing signs. Mayor Jordan asked me to draft an ordinance to limit the amount of towing and storage fees that could be charged to the vehicle's owner when a towing company tows away an improperly parked vehicle from a private parking lot. Mayor Jordan also wanted specific information required for "Paid Parking", "Customers Only" and "Residents Only" parking lot signs so persons would be fairly warned of the risk of towing and knows who to call and where to go to recover a towed vehicle.

The City Council has the power to enact an ordinance detailing: "(t)he amount of towing and storage charges, including the towing charge, and storage charge, the administrative fee, and any other fee that may be charged, to be assessed against the owner or operator of the vehicle" A.C.A. §27-50-1101 (a)(1)(B)(i). Mayor Jordan has proposed that within the Entertainment District a maximum of \$60.00 for all towing fees for a nonconsensual tow from a private Paid Parking lot and \$80.00 from a Customers Only or Residents Only parking lot could be charged to the vehicle's owner.

Since nonconsensual towing problems have occurred primarily in the Entertainment District near Dickson Street, Mayor Jordan felt that the additional signage requirements and some of the towing fee limitations should be only applicable in the Entertainment District. This ordinance does establish city-wide nonconsensual towing charge limitations of \$100.00 if a vehicle is illegally parked or abandoned on private property that is not either a paid parking lot or residents only or customers only parking lot within the Entertainment District.

Storage charges that begin twelve hours **after** the vehicle is placed in the storage area and **available for the owner to pick up** is limited to \$10.00 per day. The towing and storage company must answer the telephone number on its Nonconsensual Towing Warning Sign immediately after picking up the vehicle and for the next 12 hours or until the vehicle is returned to its owner (whichever comes first). This is to help the vehicle's owner contact the towing company and arrange to recover the vehicle. If the towing and storage company says the driver cannot pick up his vehicle when they are contacted, but has to wait until "normal operating hours" or the "next morning", the time to begin the storage fee charge is also delayed so that a driver cannot be forced to pay storage fees because the towing company was not "open" to release the car.

Police initiated tows, tows from publicly owned or leased property (including all University property) are exempt from the requirements of this proposed ordinance. Occasionally a difficult towing situation (large or damaged vehicle, etc.) could occur in which a larger nonconsensual towing fee would be justified. The property owner could call the police in this rare circumstance. If the police officer agrees, the police officer could initiate a nonconsensual tow which would not be regulated by this ordinance. Otherwise this ordinance would regulate all nonconsensual tows in the Entertainment District and, less restrictively, throughout the City.

Administrative Code References

Finance and administrations department, revenue division, federal driver's privacy act, see Code Ark. R. 006 05 033.

§ 27-50-1101. Nonconsensual towing of a vehicle, implement, or piece of machinery

(a)(1)(A) When a vehicle of a type subject to registration under the laws of this state, an implement, or a piece of machinery is found abandoned on private or public property within this state or is parked on private or public property within this state without the authorization of the property owners or other persons controlling the property, the property owner or his or her agent may have the vehicle, implement, or piece of machinery removed from the property by a towing and storage firm licensed by and subject to the rules of the Arkansas Towing and Recovery Board.

(B)(i) A city of the first class, city of the second class, or incorporated town by ordinance may regulate the manner that a property owner or other person controlling the property removes a vehicle, implement, or piece of machinery:

(a) By limiting:

(1) The distance from the location of removal to the destination of storage;

(2) The amount of towing and storage charges, including the towing charge, the storage charge, the administrative fee, and any other fee that may be charged, to be assessed against the owner or operator of the vehicle, implement, or piece of machinery removed from the property, with the difference between the charges allowed by the city and the actual towing and storage charges to be assessed to the property owner or other person controlling the property that requested the removal of the vehicle; and

(3) The request for removal of a vehicle, implement, or piece of machinery from the property to a towing and storage firm that accepts payment methods of cash, credit cards, or debit cards; and

(b) By requiring signage under § 27-51-1305 to include:

(1) The name, address, and telephone number of the towing and storage firm that may provide removal services from the parking lot;

(2) The amount of towing and storage charges that may be assessed against the owner or operator of the vehicle, implement, or other machinery; and

(3) Disclosing whether the towing and storage firm will accept the payment methods of cash, checks, credit cards, or debit cards.

(ii) An ordinance enacted under this subdivision (a)(1)(B) shall not conflict with this section.

(C) Prior to the removal of an abandoned vehicle, implement, or piece of machinery or a vehicle, implement, or piece of machinery parked without authority as provided by this section, the towing and storage firm shall

VEHICLE OPERATION & RULES OF THE ROAD

§ 27-51-1305

move the vehicle or require the driver or other person in charge of the vehicle to move it to a position off the paved or improved or main-traveled part of the highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where the vehicle constitutes an obstruction to traffic, the officer is authorized to provide for the removal of the vehicle consistent with § 27-50-1207.

Acts of 1937, Act 300, § 91; Acts of 2001, Act 1705, § 1, eff. Aug. 13, 2001.

Formerly Pope's Dig., § 6748; A.S.A. 1947, § 75-648.

Historical and Statutory Notes

2001

Acts of 2001, Act 1705 amended the section by substituting for "to the nearest garage or

other place of safety" the words "consistent with § 27-50-1207." at the end of (b).

Library References

Automobiles Ⓒ12.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to 58, 60 to 62.

§ 27-51-1305. Removal of motor vehicles parked without authority in parking lots

(a) Consistent with the procedures of § 27-50-1101, the owner of a parking lot, his or her agent, or the lessee of a space in a parking lot may cause any motor vehicle which is parked on the lot without the consent of the owner of the lot or of his or her agent or which is parked in the space of the lessee without the consent of the lessee to be removed and stored at the expense of the owner or operator of the vehicle if a readable sign is prominently placed at each entrance to the lot specifying those persons who may park in the lot and prohibiting parking therein by all others.

(b) The owner of a lot or the lessee of a space in a lot who has an unauthorized vehicle removed and stored under the provisions of subsection (a) of this section shall not be liable for damages incurred by the owner or operator of an unauthorized vehicle as a result of removal or storage if the vehicle is removed by an insured vehicle wrecker service and stored by an insured storage company.

Acts of 1971, Act 200, §§ 1, 2; Acts of 2005, Act 2211, § 7, eff. Aug. 12, 2005.

Formerly A.S.A. 1947, §§ 75-651.1, 75-651.2.

Historical and Statutory Notes

Arkansas Code Revision Commission

2005

Technical changes were made in 2005 and 2007 to conform with the official Arkansas Code of 1987 as approved by the Arkansas Code Revision Commission.

Acts of 2005, Act 2211, § 7, amended the section by inserting "Consistent with the procedures of § 27-50-1101, the" at the beginning of (a).

Cross References

Nonconsensual towing of a vehicle, implement, or piece of machinery, see § 27-50-1101.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 72 **PARKING REGULATIONS OF THE FAYETTEVILLE CODE TO ENACT REGULATIONS FOR NONCONSENSUAL TOWING OF VEHICLES WITHIN THE ENTERTAINMENT DISTRICT PARKING ZONE**

WHEREAS, nonconsensual towing of vehicles from private property has been a problem for years in the Entertainment District around Dickson Street in Fayetteville; and

WHEREAS, the Fayetteville City Council passed a Resolution requesting that the Arkansas Legislature provide additional powers to the cities of Arkansas to regulate nonconsensual towing practices; and

WHEREAS, the City Attorney traveled to Little Rock at the request of Representative Lindsley Smith to inform her Legislative Committee about the problems of nonconsensual towing; and

WHEREAS, Representative Lindsley Smith and Senator Sue Madison were finally successful in obtaining passage of Act 681 of the 2009 Legislative Session which gives the cities more rights to regulate nonconsensual towing.

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 enacts **Article IV Nonconsensual Towing Regulations** of Chapter 72 **Parking Regulations** as shown below:

“
ARTICLE IV
NONCONSENSUAL TOWING REGULATIONS

“72.70 Application.

“These nonconsensual towing regulations shall apply within the Entertainment District Parking Zone shown on Exhibit A for the nonconsensual towing of a vehicle subject to registration under the laws of Arkansas if it is found abandoned, parked without the consent

of the property owner or the owners' agent, parked in violation of the time period or location agreed to by the owner or owner's agent, or for whatever reason the owner or owner's agent believes a vehicle, which is not the property of the owner or owner's agent, should be towed. These regulations do not apply to removal of vehicles from publicly owned or leased property, nor to police initiated tows. The sign requirements do not apply to residential driveways or parking lots designed for four or fewer vehicles. These regulations shall apply city-wide where indicated in §72.72.

“72.71. Requirements for proper signage before nonconsensual towing from private parking lots is permitted within the Entertainment District Parking Zone.

(A) *Exemption from the Sign Ordinance.* All signs required by this section shall be exempt from further regulation of the Sign Ordinance pursuant to §174.03(F).

(B) *Location and Size of Nonconsensual Towing Warning Sign.* Every private parking lot with five or more spaces must have an easily readable Nonconsensual Towing Warning Sign that is not more than 16 square feet, devoid of any advertising and prominently placed at each entrance to the parking lot.

(C) *Contents of Sign for 'Paid Parking Lot'.* The Nonconsensual Towing Warning Sign shall contain only the following information in clearly legible letters at least one inch in height in the following order from the top of the sign for a private parking lot that allows paid parking.

- (1) The symbol for towing vehicles.
- (2) 'Private Parking Lot.'
- (3) Either 'Pay to park at all hours' or 'Pay to park during (posted) hours.'
- (4) At the owner's option, the sign may show the hourly rate and any maximum day or evening rate for parking in the lot.
- (5) 'Parking in violation of posted restrictions will result in towing of vehicle at owner's expense, up to \$60.00, plus storage of up to \$10.00 per day.'
- (6) Name, address (including physical address of storage lot), and telephone number of towing and storage firm authorized to tow vehicles from this private lot.

(D) *Contents of sign for 'Customers Only' or 'Residents Only' Parking Lot.* The Nonconsensual Towing Warning Sign shall contain only the following information in clearly legible letters at least one inch in height in the following order from the top of the sign for a private parking lot that prohibits public parking and allows only residents or customers to park.

- (1) The symbol for towing vehicles.
- (2) 'Private Parking Lot.'
- (3) 'Customers Only' or 'Residents Only.' The owner may denote the business or residential complex.
- (4) 'Parking of unauthorized vehicle will result in towing of vehicle at owner's expense, up to \$80.00, plus storage of up to \$10.00 per day.'
- (5) Name, address (including physical address of storage lot), and telephone number of towing and storage firm authorized to tow vehicles from this private lot.

72.72. Regulations of Towing and Storage Companies.

(A) *Valid licenses required.* Any towing and storage company operating anywhere in the City of Fayetteville must be in full compliance with all state and local license requirements, A.C.A. §27-50-1101, the Fayetteville Code, and be in good standing with the Arkansas Towing and Recovery Board.

(B) *Allowed charges for nonconsensual towing and storage.* Within the Entertainment District Parking Zone, no Towing and Storage Company may charge a nonconsensually towed vehicle's owner/driver more than \$60.00 if the vehicle is towed from a 'Paid Parking Lot', \$80.00 if the vehicle is towed from a 'Customers Only' or 'Residents Only' Parking Lot, and \$100.00 if the vehicle is towed from private property not classified as a 'Paid Parking Lot' or 'Customers Only' or 'Residents Only' Parking Lot. In addition, the towing and storage company may charge up to \$10.00 per day for storage beginning twelve hours after the nonconsensually towed vehicle is placed in the storage lot and available to be reclaimed by its owner or driver. The maximum \$100.00 towing fee and \$10.00 per day storage fee for a nonconsensual tow from private property that is not police initiated is applicable everywhere within the entire city limits. The above fees are the total amount that can be charged to the owner/operator. No administrative, special equipment or other fee can be charged to the owner/operator of the vehicle.

(C) *Payments by owner/operator for towing and storage charges.* The towing and storage company must accept valid credit and debit cards for payment of towing and storage fees and may accept any other form of payment.

(D) *Location of storage yard.* The towing and storage company may not charge mileage or transportation fees for towing the vehicle to its storage lot which must either be located within Fayetteville or not more than eight miles from the place from which the vehicle was towed.

(E) *Company must answer telephone.* The towing and storage company shall answer every telephone call for the number displayed upon the Nonconsensual Towing Warning Sign during every 12 hour period immediately after a vehicle has been towed if such vehicle remains in the towing and storage company's possession.

PASSED and **APPROVED** this 4th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

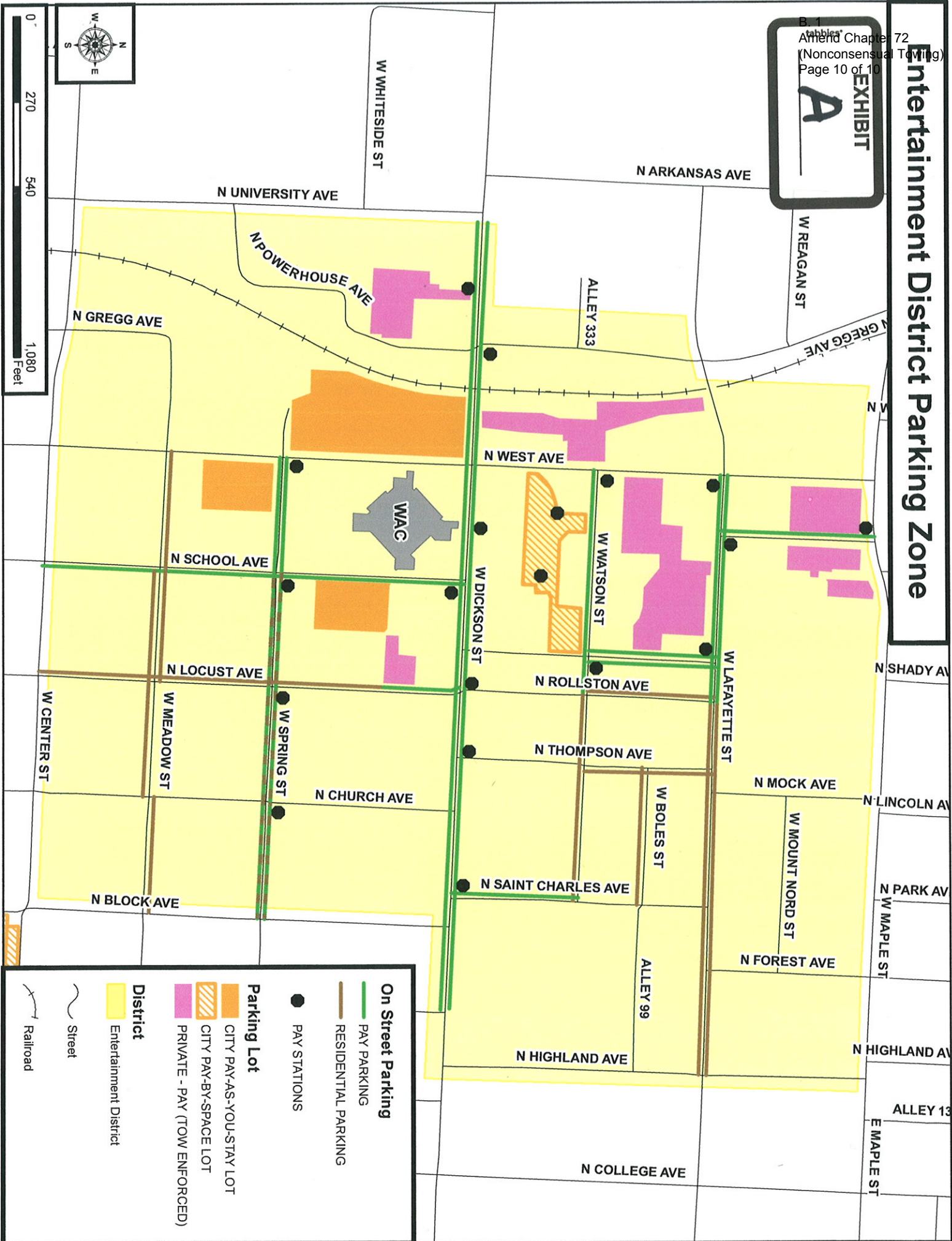
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Entertainment District Parking Zone

B-1
 Appendix Chapter 72
 (Nonconsensual Towing)
 Page 10 of 10

EXHIBIT

A



On Street Parking

- PAY PARKING
- RESIDENTIAL PARKING
- PAY STATIONS

Parking Lot

- CITY PAY-AS-YOU-STAY LOT
- CITY PAY-BY-SPACE LOT
- PRIVATE - PAY (TOW ENFORCED)

District

- Entertainment District

Street

Railroad

City of Fayetteville Staff Review Form

B. 2
Amend Chapter 72
(\$72.18 Residential Parking Permit)
Page 1 of 14

**City Council Agenda Items
and
Contracts, Leases or Agreements**

2

5/4/2010

City Council Meeting Date
Agenda Items Only

Sharon Crosson

Submitted By

Parking Management

Division

Transportation Services

Department

Action Required:

An Ordinance to amend Chapter 72 Parking Regulations of The Fayetteville Code to enact a Residential Parking Program in the Entertainment District Parking Zone.

\$ 900.00

Cost of this request

\$ 12,000.00

Category / Project Budget

Residential Parking Program

Program Category / Project Name

2130-9130-5404-00

Account Number

\$ 687.51

Funds Used to Date

Traffic Control Maint.

Program / Project Category Name

\$ 11,312.49

Remaining Balance

Off-Street Parking

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Ty 2. Gully
Department Director

4-16-10

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

K. J. ...
City Attorney

4-16-2010

Date

Paul a. B...
Finance and Internal Services Director

4-19-2010

Date

Received in City
Clerk's Office

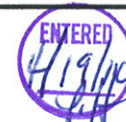


Jim Man...
Chief of Staff

4-18-10

Date

Received in
Mayor's Office



Donald Jordan
Mayor

4/19/10

Date

Comments:

Left on the First Reading at the 5/4/10 CC mtg.

Revised January 15, 2009

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Director of Transportation

From: Sharon Crosson, Parking and Telecom Manager

Date: April 16, 2010, 2010

Subject: An Ordinance to Amend Chapter 72 Parking Regulations of The Fayetteville Code to Enact a Residential Parking Program in the Entertainment District Parking Zone

PROPOSAL:

City staff is recommends the approval of an ordinance to enact a Residential Parking Program in the Entertainment District Parking Zone. The Entertainment District Parking Zone encompasses the area as shown in **Exhibit A**. This program is designed to address the parking needs of the local merchants, visitors, employees and residents of Dickson Street and surrounding neighborhoods.

RECOMMENDATION:

The purpose of this program is to provide no fee parking to City of Fayetteville residents that own, lease or rent residential units within the **Entertainment District Parking Zone**. The Entertainment District Parking Zone includes two Residential Parking Zones. The **Residential Parking Zone North** includes on-street parking spaces north of Dickson Street that are reserved for the exclusive use of residents to park their vehicles. The **Residential Parking Zone South** includes on-street parking spaces south of Dickson Street that are reserved for the exclusive use of residents to park their vehicles. Residential parking permits shall not be valid for use at any off-street public parking area.

While most residential units have adequate off-street parking it is reasonable to expect that several residents will require access to on-street spaces. Residents will be issued **one (1)** no fee on-street parking permit for **each vehicle** registered to the address within the Residential Parking Zone. These permits will be re-issued quarterly and will be for the exclusive use of the resident. The residential parking permit is non-transferable and has no cash value. Residential parking permits shall only be valid in the Residential Parking Zone for which it has been issued.

The **Residential Parking Zone North** provides approximately 116 on-street parking spaces for area residents. The **Residential Parking Zone South** provides approximately 79 on-street parking spaces for area residents, with an additional 59 "mixed-use" spaces available for area residents. There are **three (3)** blocks on Spring Street that will be mixed-use parking that will be available for public parking as well as overflow residential parking for the **Residential Parking Zone South**.

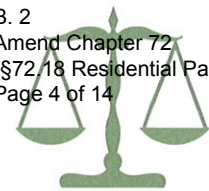
Residents will be required to provide the following information quarterly to qualify for a Residential Parking Permit:

1. Proof of residence within one of the two Residential Parking Zones
2. Current list/inventory of owned vehicles
3. Proof of vehicle ownership with registration matching the physical address within the Residential Parking Zone.
4. Vehicle to be permitted must be a motorized vehicle that will fit within a marked parking space.

Residential Parking Zone residents are encouraged to park their short term visitors in their respective driveways and utilize the on-street spaces for vehicles that are assigned a Residential Parking Permit. During special occasions when a resident will have several visitors, the resident shall contact the City of Fayetteville Parking Division for additional parking privileges as needed. All parking requests beyond the standard issued Residential Parking Permit will be reviewed and approved on a case by case basis.

BUDGET IMPACT:

Implementation of this program will include additional striping on-street of parking spaces and appropriate signage on these streets. The estimated startup cost for this program is \$900.00.



TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Terry Gulley, Transportation Services Director
Sharon Crosson, Parking & Telecommunications Manager

FROM: **Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to read 'Kit Williams', with a long horizontal line extending to the right.

DATE: **April 16, 2010**

RE: **Residential Parking Permit Program
for the Entertainment District Parking Zone**

I have drafted the ordinance to enact §72.18 **Residential Parking Permit Program for the Entertainment District Parking Zone** pursuant to the Administration's request and in compliance with the terms of the report from Sharon Crosson, Parking and Telecommunications Manager. This program would provide residents of the district free vehicle parking permits for every vehicle owned and make many streets available for resident parking only.

In reviewing the laws to see if a city has the power to convert formerly public on-street parking spaces to resident only on-street parking spaces, I found Arkansas Attorney General Opinion No. 97-403 issued January 15, 1998. (attached) Attorney General Winston Bryant took an expansive view of a city council's powers to enact a parking permit system for on-street parking in the Hillcrest area of Little Rock. The Attorney General noted:

“There does not appear to be any helpful Arkansas case law concerning the precise question presented in your letter; however, courts from other jurisdictions have upheld local parking restrictions which discriminate in favor of residents of the particular area and against nonresidents thereof.”

The Attorney General then cited *County of Arlington v. Richards*, 434 U.S. 5 (1977) which held:

“To reduce air pollution and other environmental effects of automobile commuting, a community reasonably may restrict on-street parking available to commuters, thus encouraging reliance in car pools and mass transit.

...

“The Constitution does not outlaw these social and environmental objectives, nor does it presume distinctions between residents and nonresidents of a neighborhood to be invidious. The Equal Protection clause only requires that the distinction drawn by an ordinance like Arlington’s rationally promote the regulation’s objectives.” *Supra*, 434 U.S. at 7

Although Attorney General Bryant did cite one Montana case upholding a parking permit system favoring residents, he failed to note some state court decisions which had disallowed parking ordinances favoring residents. A Florida city’s ordinance was struck down as follows:

“*Arlington* is distinguishable from the instant case. Here, the goal of the ordinance is not to curtail air pollution, noise or traffic. Rather, the ordinance is intended solely to give residents preference over non-residents in the use of parking spaces in the park.” *City of Maitland, v. Orlando Bassmasters Association*, 431 S.W. 2d 178 (1983)

New York courts, while acknowledging that the United States Constitution may not invalidate preferential neighborhood parking, have held that New York state law did not grant cities the right to grant to residents of a neighborhood any possessory or proprietary right to the portion of the public road use for parking “in priority to or exclusive of use by the general public.” *New York State Public Employees Federations v. City of Albany*, 72 NY 2d 96, 102 (1988).

Both the Montana Supreme Court and the Pennsylvania Supreme Court have agreed that a city could implement a restrictive parking system discriminating in favor of residents of a neighborhood. *Love v. Borough of Stroudsburg*, 528 Pa. 320 (1991); *University of Montana Students v. City of Missoula*, 862 P2d 380 (Mont. 1993).

I checked with the Little Rock City Attorney to see if they had implemented or had any problems with the Hillcrest residential parking permit system discussed by the Attorney General. Little Rock had never implemented such a plan. However, North Little Rock implemented the “Argenta Residential Parking District” on March 26, 2007 to alleviate the parking problem for an historic residential area near the new Dickey-Stephens Baseball Park (Arkansas Travelers) during games. This residential parking district has not been challenged in Court nor caused substantial opposition from Travelers’ fans.

One source of statutory power to regulate streets (and I would argue street parking places) is found in A.C.A. 14-301-101 **Responsibilities of city council.**

“The city council shall:

“(1) Have the care, supervision, and control of all the public highways, bridges, streets, alleys, public squares, and commons within the city.”

The Arkansas Supreme Court has also recognized and held that city councils have much discretion in their regulation of streets. The only real limitations on this discretion would be an invasion of private rights or trying to do something in excess of their authorized power.

“Matters pertaining to regulations of streets and alleys and their use among those over which cities have authority to act and to exercise discretion ... With such broad powers over streets and alleys, it seems that the latitude of discretion vested in city governing boards should be very wide indeed.” *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W. 2d 455, 461 (1968)

“This court long ago recognized that the varied uses and conflicts of city life required that much must be left to the discretion of city authorities, whose actions should not be judicially interfered with unless manifestly unreasonable and oppressive, an unwarranted invasion of private rights, or clearly in excess of powers granted.” *Id.* at 462

CONCLUSION

With no Arkansas Supreme Court decisions on the precise issue of a city council's power to change public on-street parking spaces to resident-only on-street parking spaces, I can give no absolute assurance of your power in this area. Some states have disallowed it, and some states have approved it. The Arkansas Attorney General opined in 1998 that such a residents-only on-street parking program would be legal in Arkansas. Your power to establish this parking program may depend partly upon the demonstrated need and fairness of this residents-only parking program.

Opinion No. 97-403

January 15, 1998

The Honorable Phil C. Wyrick
State Senator
11001 Alexander Road
Mabelvale, Arkansas 72103-1905

Dear Senator Wyrick:

This is in response to your request, on behalf of the Hillcrest Residents Association, for an opinion concerning whether the City of Little Rock may establish "permit parking districts in residential areas." You indicate that such designated areas would require a parking permit for on-street parking in the area, and parking permits would be issued only to bona fide residents of the area. In my opinion, the answer to your question is generally "yes."

The Arkansas Supreme Court has stated that in order to be a valid enactment, an ordinance must come within the scope of the powers granted to cities and towns, be promulgated in the proper exercise of police powers, and must bear some reasonable relation to the public health, safety, morals, welfare, comfort, or convenience. *Wilkins v. City of Harrison*, 218 Ark. 316, 236 S.W.2d 82 (1951). An ordinance must not be arbitrary, capricious, or unreasonable. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991). It is my opinion that the type of ordinance contemplated in your letter bears a reasonable relation to the public health, safety, morals, welfare, comfort, or convenience. See generally *Macedonian Orthodox Church v. Planning Board of Randolph*, 636 A.2d 96 (N.J. Super. A.D. 1994) (a municipality can exercise its general police powers to deal with problems of traffic and parking so that the character of a residential neighborhood is preserved).

It is well established that municipalities have the right to enact reasonable regulations relating to the parking or standing of vehicles, and the authority to enact regulations relating to the parking or standing of vehicles may be implied from the power delegated to municipalities to regulate traffic or to prevent the encumbering of their streets with vehicles. 7A Am Jur 2d, *Automobiles and Highway Traffic* § 329 (1997). Arkansas Code Annotated § 14-55-102 (1987) states that municipal corporations shall have the power to make and publish bylaws and ordinances, not inconsistent with the laws of the state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof. See generally *Garrison v. City of Alpena*, 234 Ark. 170, 350 S.W.2d 690 (1961) (a city has the authority to pass local traffic ordinances to regulate, warn or guide traffic). Additionally, A.C.A. § 14-301-101 (1987) provides that the city council shall (1) have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city; and (2) cause those public highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair, and free from nuisance. [1] In short, municipal authorities have wide discretion in matters of making reasonable provisions for the safety of its inhabitants through the enactment of ordinances, resolutions or

bylaws. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

There does not appear to be any helpful Arkansas case law concerning the precise question presented in your letter; however, courts from other jurisdictions have upheld local parking restrictions which discriminate in favor of residents of the particular area and against nonresidents thereof. The United States Supreme Court has held that such an ordinance does not, on its face, violate the Equal Protection Clause. *County Bd. of Arlington County, Va. v. Richards*, 434 U.S. 5, reh'g denied, 434 U.S. 976 (1977). The Court noted that a community may decide that restrictions on the flow of outside traffic into particular residential areas would enhance the quality of life thereby reducing noise, traffic hazards, and litter. *Id.* The Court further noted that the Constitution does not outlaw such social and environmental objectives, nor does it presume distinctions between residents and nonresidents of a local neighborhood to be invidious. *Id.*

In a case comparable to the situation presented in your letter, the Supreme Court of Montana upheld two city ordinances which regulated parking in the residential areas adjacent to the University of Montana. *Associated Students of the University of Montana v. City of Missoula*, 862 P.2d 380 (Mont. 1993); see also *Love v. Borough of Stroudsburg*, 597 A.2d 1137 (Penn. 1991) (borough ordinance creating a restrictive residential parking scheme was a valid exercise of police power and was not in violation of equal protection provisions of Pennsylvania Constitution). The City of Missoula adopted an on-street parking permit program to be used in residential areas adjacent to the University of Montana. Commuter parking on the sides of certain streets was prohibited between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Exceptions, however, permitted parking on holidays, parking for vehicles with permits, and parking for emergency or service vehicles. University area residential homeowners were permitted to purchase parking permits, but nonresidents could not purchase the permits. In upholding the ordinance, the court held that the distinction between residents and nonresidents rationally related to the City's legitimate governmental interests. The court concluded that the City had a legitimate interest in preserving the tranquillity among University commuters and area residents, in assuring homeowners ample parking space for themselves and their guests, and in reducing noise, traffic hazards, and litter in its residential areas.

Finally, with regard to whether a city must make any "finding[s] of fact" prior to establishing a "permit parking area," a city is not required to make any express "finding[s] of fact" prior to adopting an ordinance. Thus, it is possible that the city's governing body could simply determine that a specific area should be designated a "permit parking area." On the other hand, the city may also elect to adopt an ordinance specifying the manner in which an area may qualify as a "permit parking area." Under such an ordinance, the city should specify the requirements necessary to qualify as a "permit parking area." See *Love*, supra; *County Board of Arlington*, supra. The establishing of such requirements is a matter within the purview of the governing body of the city.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Warren T. Readnour.

Sincerely,

WINSTON BRYANT
Attorney General

WB:WTR/cyh

[1] Although you have not indicated that any part of the state highway system is involved, A.C.A. § 27-49-106(a) of the Uniform Act Regulating Traffic on Highways of Arkansas provides that no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this act unless expressly authorized in this act. Section 27-49-106(b) provides, however, that "provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from: (1) Regulating the standing or parking of vehicles."

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND CHAPTER 72 PARKING REGULATIONS
BY ENACTING §72.18 RESIDENTIAL PARKING PERMIT PROGRAM
FOR ENTERTAINMENT DISTRICT PARKING ZONE**

WHEREAS, the Downtown Master Plan encompassing the Entertainment District Parking Zone and general city policy encourages residential uses within this Entertainment District; and

WHEREAS, the change of several large city parking lots from free parking to paid parking is likely to cause increased congestion and on-street parking problems for residents of the Entertainment District Parking Zone; and

WHEREAS, some accommodation to relieve the increased congestion and on-street parking problems should be enacted protect the quality of residential life for these residents; and

WHEREAS, a Residential Parking Permit Program for residents of the Entertainment District can ease this congestion and loss of on-street parking availability for these residents.

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 amends Chapter 72 **Parking Regulations** by enacting a new §72.18 **Residential Parking Permit Program for the Entertainment District Parking Zone** as shown below:

“72.18 Residential Parking Permit Program for the Entertainment District Parking Zone

(A) *Applicability.* This Residential Parking Permit Program shall be applicable within the Entertainment District Parking Zone as shown and described on Exhibit A attached to the enacting ordinance. This parking zone will be further divided by Dickson Street into the North Zone for included residents living north of Dickson Street and the South Zone for included residents living south of Dickson Street.

(B) *Definitions.*

‘Resident’ means a natural person residing within a dwelling that the resident owns, leases or rents within the Entertainment District Parking Zone.

‘Registered vehicle’ means a motorized, validly state licensed and insured vehicle kept at the residence owned or leased by the resident within the Entertainment District Parking Zone. The Arkansas Vehicle Registration Certificate for the vehicle should list the residence within the Entertainment District.

‘Permit’ means the currently valid permit issued by Parking Division of the Transportation Department of the City of Fayetteville which allows the resident to park the permitted resident’s vehicle in an authorized on-street parking zone pursuant to the terms of this section.

(C) *Restricted parking periods.* From 1:00 p.m. on Sundays and 10:00 a.m. Monday through Saturday until 2:00 a.m. every day, designated on-street parking spaces within the Entertainment District Parking Zone North and South shall be restricted to properly permitted vehicles. The owner of any vehicle improperly parked during this period shall be subject to the penalties set forth in §72.99.

(D) *On-street parking restrictions for most vehicles in the Entertainment District Parking Zone.* Where designated by signs and as shown on the exhibits, only residents of the Entertainment District Parking Zone North shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone North of Dickson Street during the restricted parking period. Where designated by signs and as shown on the exhibits, only residents of the Entertainment District Parking Zone South shall be permitted to park their properly permitted vehicles in the designated on-street parking areas of the Residential Parking Zone South of Dickson Street during the restricted parking period.

(E) *Special regulations for oversized vehicles, motorcycles and licensed motor scooters.* No vehicle that cannot fit within a standard on-street parking space may be permitted or parked on-street in the Entertainment District Parking Zone. Moving vans serving a residence or business in the District may be specially permitted by the Transportation Department. Motorcycles and licensed motor scooters may receive a permit allowing parking only in special motorcycle/motor scooter on-street parking spaces and be prohibited from parking in standard on-street parking spaces.

(F) *Mixed use on-street parking on Spring Street.* Fifty-nine on-street parking spaces on Spring Street shall be available to the public for paid parking and to residents of the Entertainment District Parking Zone South for properly permitted vehicles free of charge.

(G) *Free public use of on-street parking.* From 2:00 a.m. every day and until 10:00 a.m. Monday through Saturday and until 1:00 p.m. on Sunday, all on-street parking spaces within the Entertainment District Parking Zone shall be free of charge and available to the public.

(H) *Temporary guest permits.* An Entertainment District Parking Zone resident may petition the City to issue temporary guest permits for visitors to their residence to use for a special, short and infrequent event. The resident must show good cause why a limited number of guest permits shall be issued by the City. The Parking and Telecommunications Manager shall investigate any such application and weigh the good cause shown by the applicant against the anticipated need for on-street parking by other residents and recommend to the Transportation Director whether or not to issue a certain number of temporary guest permits only if it is determined that their issuance shall not unduly inconvenience other residents or the public's access to the Spring Street mixed use parking spaces. The Transportation Director's decision shall be final.

(I) *Parking permits may not be loaned, transferred, sold or used except on the designated registered vehicle.* Any resident who attempts to or does loan, transfer, sell or give a permit to another person or entity, or who facilitates the use of the permit obtained for his registered vehicle on a nonregistered vehicle shall, in addition to the general penalty provisions in this chapter, immediately forfeit all permits issued to the resident and the right to apply for any future permits for three years.

(J) *Penalty.* The owner of any vehicle parked in violation of any term or requirement of this section shall be guilty of a violation and shall be subject to the penalties set forth in §72.99.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals any ordinance or code section that is inconsistent or incompatible with this ordinance to the extent of such inconsistency or incompatibility.

PASSED and APPROVED this 18th day of May, 2010.

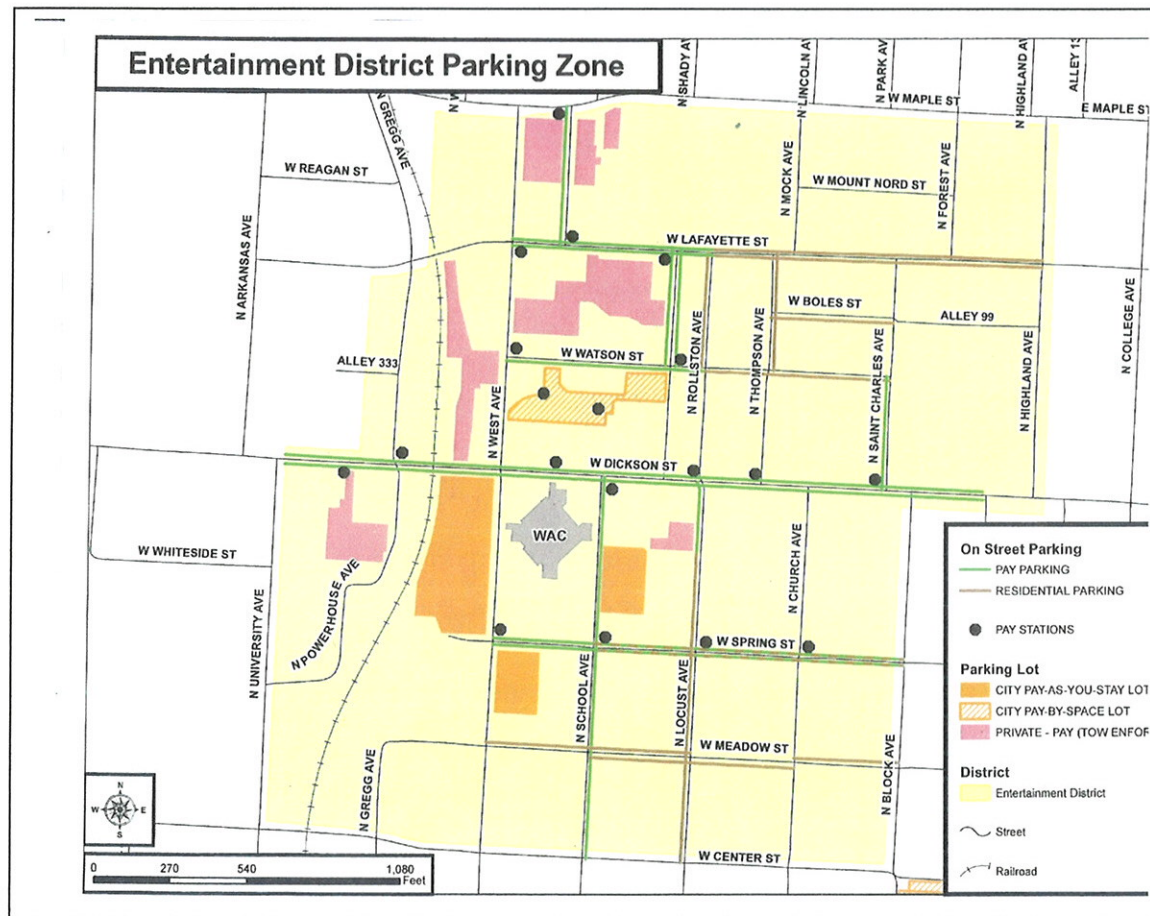
APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT A



Residential Parking Zone North:

1. Lafayette Street from Rollston Ave. to Highland Ave.
2. Boles Street from Thompson Ave. to St. Charles Ave.
3. Watson Street from Rollston Ave. to St. Charles Ave.
4. Rollston Ave. from Lafayette Street to Watson Street
5. Thompson Ave. from Lafayette Street to Watson Street

Residential Parking Zone South:

1. * Mixed-use area: Spring Street from School Ave. to Block Ave.
2. Meadow Street from West Ave. to Block Ave.
3. Locust Ave. from Center Street to 221 N. Locust Ave.

* Mixed-use area will be a combination of public parking and residential parking (with permit).

City of Fayetteville Staff Review Form

B. 3
Amend Chapter 72
(Electronic Payment Station Program)
Page 1 of 24

**City Council Agenda Items
and
Contracts, Leases or Agreements**

3

5/4/2010

City Council Meeting Date
Agenda Items Only

Sharon Crosson

Submitted By

Parking Management

Division

Transportation Services

Department

Action Required:

An Ordinance to amend Chapter 72 Parking Regulations of The Fayetteville Code to enact a Pay Parking Program and establish parking meter rates in the Entertainment District Parking Zone.

Cost of this request

\$

-

Category / Project Budget

Entertainment Dist. Parking Program

Program Category / Project Name

(multiple)

Account Number

\$

-

Funds Used to Date

(multiple)

Program / Project Category Name

Project Number

\$

-

Remaining Balance

Off-Street Parking

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Department Director

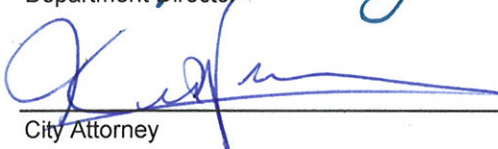
4-16-10

Date

Previous Ordinance or Resolution #

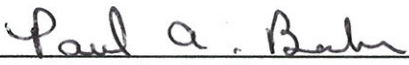
Original Contract Date:

Original Contract Number:


City Attorney

April 22, 2010

Date


Finance and Internal Services Director

4-22-2010

Date

 Received in City
Clerk's Office


Chief of Staff

4-22-10

Date

 Received in
Mayor's Office


Mayor

4/26/10

Date

Comments:

Left on First Reading at the 5/4/10 CC mtg.

Revised January 15, 2009

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Director of Transportation

From: Sharon Crosson, Parking and Telecom Manager

Date: April 16, 2010, 2010

Subject: An Ordinance to Amend Chapter 72 Parking Regulations of The Fayetteville Code to Enact a Pay Parking Program in the Entertainment District Parking Zone

PROPOSAL:

City staff is recommends the approval of an ordinance to enact a pay parking program, referred to as the ***Entertainment District Parking Program***. The Entertainment District Parking Program encompasses the area as shown in **Exhibit A** and referred to as the ***Entertainment District Parking Zone***.

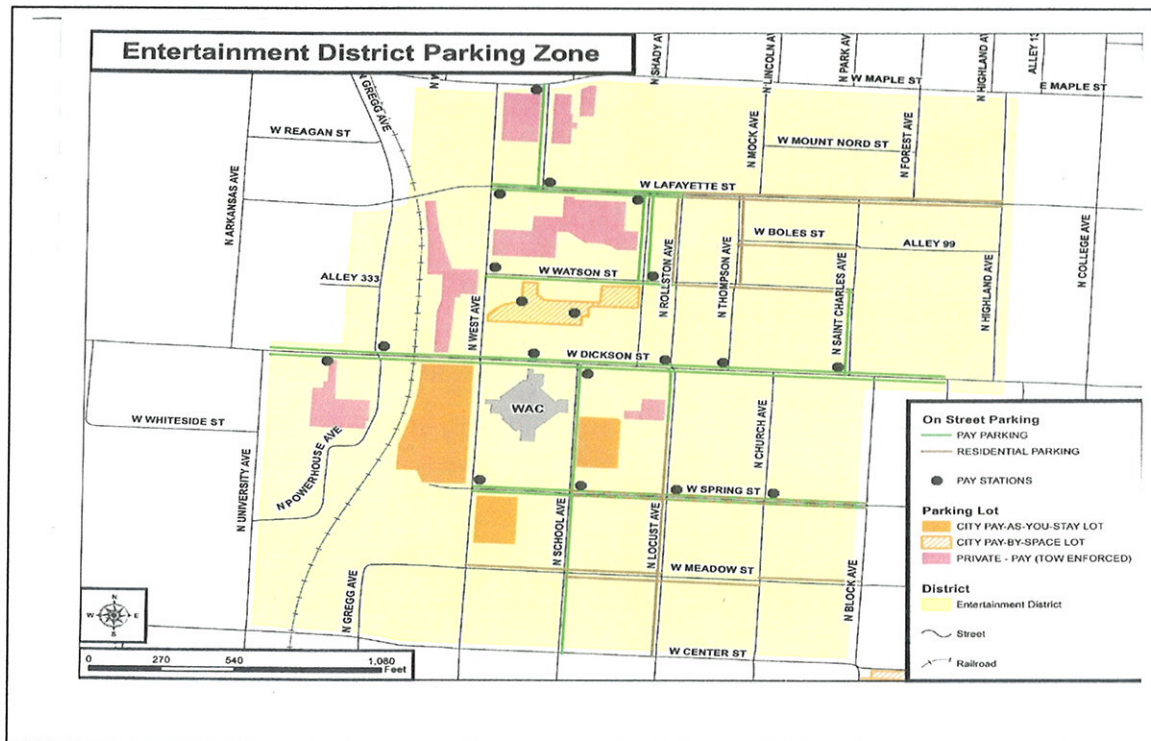
RECOMMENDATION:

This purpose of this program is to address the parking needs of the local merchants, visitors, employees and residents of Dickson Street and surrounding areas by implementing a pay parking program in the public parking lots and on-street spaces within the district. Every Section of this program is referring completely to the areas within the boundaries defined as the ***Entertainment District Parking Zone***. The program is designed to improve parking services in the Entertainment District and surrounding areas and achieve this goal by instituting pay parking in public facilities that are currently free, protecting adjacent neighborhoods from parking infiltration, develop an improved mechanism of enforcement for privately owned lots, which would eliminate towing and immobilization as their primary means of enforcement. The ***Entertainment District Parking Program*** will also provide a revenue source for generating funds to support the construction of a parking deck in the district.

BUDGET IMPACT:

Implementation of this program will generate a projected \$997,084.00 in annual revenues. Recurring annual expenses will be \$120,415.00 which includes staffing and operational expenses. Annual equipment lease is \$177,648.00. An allocation to the Walton Arts Center will be considered and a percentage allocation will be escrowed for a future parking deck.

EXHIBIT A



Outside Boundaries of the Entertainment District Parking Zone:

1. North Boundary: Up to but not including W. Maple Street
2. East Boundary: Up to and including N. Highland Ave.
3. South Boundary: Up to but not including W. Center Street
4. West Boundary: Up to but not including N. University Ave.
5. Thompson Ave. from Lafayette Street to Watson Street

On-Street Pay Parking in the Entertainment District Parking Zone:

1. N. Vandeventer Ave.
2. W. Lafayette Street
3. N. Campbell Ave.
4. W. Watson Street
5. N. St. Charles Street
6. W. Dickson Street
7. N. School Ave.
8. N. Locust Ave. between 225 N. Locust and Dickson Street
9. W. Spring Street

Pay Parking Lots in the Entertainment District Parking Zone:

1. Lot 50 – Northwest corner of West Ave. and Dickson St. (251 N. West Ave.)
2. Lot 56 – Southeast corner of West Ave. and Spring Street
3. Lot 60 – 246 N. School Ave.
4. Lot 55 – Southwest corner of Watson St. and Campbell Ave. (320 W. Watson Ave.)

Meter Fees & Times; Public On-Street Parking including Public Lots 50, 55, 56, 60

Parking rates for on-street parking spaces and public parking spaces in Lots 50, 55, 56 and 60 shall be set at the following rates and times:

Monday through Friday

- 2:00am to 10:00 am – Free
- 10:00am to 5:00pm - \$0.50/hour, \$3.00 max.
- 5:00pm to 2:00am the following day – \$1.00/hour, \$5.00 max.

Saturday

- 2:00am to 10:00am – Free
- 10:00am to 6:00pm - \$0.50/hour, \$3.00 max.
- 6:00pm to 2:00am the following day – \$1.00/hour, \$5.00 max.

Sunday

- 2:00am to 1:00pm – Free
- 1:00pm to 6:00pm - \$0.50/hour
- 6:00pm to 2:00am the following day – \$1.00/hour, \$5.00 max.

Entertainment District Employee Parking Program

Debit cards may be utilized by Entertainment District Employees that will provide a **ninety percent (90%)** discount on the current parking rate while parked in any designated discounted space. If an employee chooses to park on the prime spaces not designated for discounted parking, then their debit card shall be charged the full parking rate. The discounted parking spaces shall be determined by the Parking Manager as the needs of the public changes in the district.

The “Employee Parking Cards” may be obtained at the Parking Management Division and loaded as a pre-paid card or attached to the employee’s credit card. Employers that wish to provide parking benefits for their employees may also acquire and add funds to their employees’ cards. Merchants may also choose this option for providing parking benefits for their customers and/or members. These cards can be programmed to operate at specific areas as well.

Entertainment District Monthly Parking Permits

Monthly parkers will be allowed to park based on their parking privileges as programmed in the system server. Monthly parkers will access parking using Proximity Access Cards that are authorized for use on the system server based on the monthly parker pre-payment of monthly parker fees. Monthly parkers will drive into the entry or exit lanes causing the Proximity Card Reader to arm and read a properly presented and valid Proximity Access Card. A properly presented and valid card will cause the entry or exit gate to open allowing one vehicle to enter or exit the parking facility. Each lane will be fitted with a telephone based intercom to provide customer service in the event of an emergency. The designated parking spaces valid with a monthly parking permit shall be determined by the Parking Manager as the needs of the public changes in the district.

The parking fee for a parking permit is \$35.00 per month and is valid from 7:00am until 4:00pm and only on weekdays, Monday through Friday, excluding national holidays.

B. 3
Amend Chapter 72
(Electronic Payment Station Program)
Page 5 of 24

*** Includes Startup Costs of \$109,500**

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE III **PARKING METERS**
OF CHAPTER 72 **PARKING REGULATIONS** BY CHANGING
ITS NAME AND ADDING PROVISIONS FOR AN ELECTRONIC
PAYMENT STATION PROGRAM FOR PAID PARKING LOTS AND
PAID ON-STREET PARKING AND FOR OTHER REASONS

**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
amends Article III **Parking Meters** of Chapter 72 **Parking Regulations** by renaming
Article III **Parking Meters and Electronic Payment Stations** and adding the following
definitions to §72.50 **Definitions:**

“Electronic Payment Stations’. A place where a person who has
parked his vehicle in the Entertainment District Parking Zone pay
parking space or lot may pay the appropriate fee for the paid park
parking space.

‘Employee Parking Card.’ A card issued by the Parking Division for
use only by employees of businesses operating in the
Entertainment District Parking Zone which may be discounted by
the Mayor up to 90% of normal parking rates for certain paid
parking spaces within the Zone.

‘Entertainment District Parking Zone.’ The area depicted on the map
and described on Exhibit A attached to this enacting ordinance.

‘Proximity Access Card.’ A card issued by the Parking Division for a
monthly fee that allows the user to access and use gated parking
lots in the Entertainment District Parking Zone on weekdays from
10:00 a.m. until 5:00 p.m.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.51 **Presumption As To Unlawful Parking in Metered Space** by repealing it in its entirety and enacting a replacement §72.51 **Presumption As To Unlawful Parking In Metered Space and Paid Parking Space or Lot Serviced By An Electronic Payment Station.**

"The indication on the parking meter or within the Electronic Payment Station System that the paid for time has expired shall be presumptive evidence, as to the parked vehicle then found in the parking space or paid parking lot regulated by such parking meter or the Electronic Payment Station System, that the owner or driver has failed to pay for all the parking used in such space or lot which shall be presumptive evidence of the violation of unlawful parking."

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.52 **Purpose of Deposit Requirement** by repealing it in its entirety and enacting a replacement §72.52 **Purpose of Deposit or Electronic Payment Requirement.**

"The coins required to be deposited in parking meters or the electronic payment required to be made at electronic payment stations by this article are for the purpose of regulating parking, to cover part of the cost of such necessary regulation for the convenience and protection of the public, to accumulate revenues to use for the construction of additional parking facilities including parking decks, and to provide operating revenue for the Walton Arts Center."

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.53 **Depositing Slugs Prohibited** by repealing it in its entirety and enacting a replacement §72.53 **Depositing Slugs or Making Simulated Electronic Payment Prohibited.**

"(A) It shall be unlawful for any person to deposit or cause to be deposited in any parking meter installed under this article any slug, device or substitute for a coin of the United States of America.

(B) It shall be unlawful for any person to simulate an electronic payment at any electronic payment station installed under this article by any means."

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.54 **Tampering with Meters Prohibited** by repealing it in its entirety and enacting a replacement § 72.54 **Tampering with Meters or Electronic Payment Stations Prohibited**.

"It shall be unlawful for any person to deface, injure, tamper with, willfully break, destroy or impair the usefulness of, or to open without lawful authority, any parking meter or electronic pay station installed in accord with this article."

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.55 **Collections from Meters** by repealing it in its entirety and enacting a replacement § 72.55 **Collections from Meters and Electronic Payment Stations**.

"The Parking Manager shall collect all deposits or electronic transactions from parking meters and electronic payment stations installed under this article and deliver them to the Accounting Department."

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.57 **Parking Meter Zones** by repealing subsection (E) and subsection (F) in their entirety and enacting replacement subsections as shown below:

"§72.57(E) *Regulated hours for parking meters.*

(1) Within the Entertainment District Parking Zone between the hours of 10 a.m. until 2:00 a.m. Monday - Saturday and 1:00 p.m. until 2:00 a.m. on Sunday a.m. the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit sufficient money as required in §72.58(H), in the parking meter.

(2) Outside the Entertainment District Parking Zone between the hours of 8:00 a.m. until 6:00 p.m. Monday - Friday (except City holidays), the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit sufficient money as required in §72.58(G) in the parking meter.

"(F) *Unlawful to leave vehicle parked in excess of allowed time.*

"Upon the expiration of the legal parking time paid for and allowed pursuant to this chapter during the period that paid

parking is required, it is unlawful for the owner or driver to leave the vehicle in the parking space. Violation of such overtime parking shall be punished pursuant to §72.99."

Section 8: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.58 **Off-Street Parking Meter Facilities; Rates for City Garage** by renaming the section **Off-Street parking Facilities; Rules and Rates** and by repealing subsections (G), (H) and (J) in their entirety and enacting replacement subsections (G), (H) and (J) as shown below:

"(G) Gated parking lots, parking decks and parking meters outside the Entertainment Parking District Zone. For all the parking lots identified in subsection (A) and all parking meters outside the Entertainment Parking District Zone.

The following parking fees are established and shall be required to be paid by the owner or operator of any vehicle parked in those spaces or parking lots:

- (1) Long-term metered spaces (red-capped parking meters) -- \$.15 per hour.
- (2) All other parking meters -- \$.25 per hour.
- (3) Gated lot (per space) -- \$30.00 per month.
- (4) Long-term parking permits (hang tags) for use only at long-term (red-capped) meters -- \$30.00 per month.
- (5) City Parking Deck at Meadow Street -- \$45.00 per month for first and second levels, \$30.00 per month for third level, plus single day usage fee of not more than \$4.00 if space is available.
- (6) Town Center Parking Deck - not more than \$70.00 per month nor more than \$4.00 per day if space is available.

(H) City parking lots and paid on-street parking spaces within the Entertainment District Parking Zone.

(1) For Parking Lots 50, 55, 56 and 60 and all paid on-street parking spaces within the Entertainment District Parking Zone, the following parking fees are established and shall be required to be paid by the owner or operator of any vehicle parked in those spaces or lots:

(1) Monday through Friday

(a) 10:00 a.m. until 5:00 p.m. - \$.50 per hour with a maximum charge of \$3.00

(b) 5:00 p.m. until 2:00 a.m. the following day - \$1.00 per hour with a maximum charge of \$5.00

(c) 2:00 a.m. until 10:00 a.m. - free parking

(2) Saturday

(a) 10:00 a.m. until 6:00 p.m. - \$.50 per hour with a maximum charge of \$3.00

(b) 6:00 p.m. until 2:00 a.m. the following day - \$1.00 per hour with maximum charge of \$5.00

(c) 2:00 a.m. until 10:00 a.m. - free parking

(3) Sunday

(a) 1:00 p.m. until 6:00 p.m. - \$.50 per hour

(b) 6:00 p.m. until 2:00 a.m. the following day - \$1.00 per hour with a maximum charge of \$5.00

(c) 2:00 a.m. until 1:00 p.m. - free parking

(4) Monthly daytime parking permits (Proximity Access Cards) for gated parking lots in the Entertainment District Parking Zone.

Persons desiring to purchase monthly access to and parking within gated lots in the Entertainment District Parking Zone between the hours of 10:00 a.m. and 4:00 p.m. on weekdays (excluding holidays) may purchase a Proximity Access Card for \$35.00. Any Proximity Access Card holder shall be required to pay normal hourly parking fees for any parking within the lot beyond 4:00 p.m. Special events authorized by the Mayor that require use of the gated parking lot will supersede the rights of monthly parkers during such event.

(5) Discounted parking rates for employees. (Employee Parking Cards)

In order to assist employees working in the Entertainment District Parking Zone, the Mayor is authorized to sell and issue Employee Parking Cards that can be used for certain more distant parking spaces at a highly discounted rate of up to 90% off the normal parking rate.

(I) *Overtime parking.*

(1) If any vehicle remains parked in any metered parking space or within a paid parking lot beyond the period paid for such parking, the owner or operator of such vehicle shall be guilty of overtime parking and be subject to the punishment specified in §72.99.

(2) It is unlawful for any person to cause, allow or permit any vehicle owned or operated by said person to be parked in a gated city lot for more than 24 continuous hours. Any such illegally parked vehicle is subject to the provisions of §72.99 and to nonconsensual towing at the owner's expense who shall have post-deprivation hearing rights as set for in subsection (L).

PASSED and **APPROVED** this 4th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE III **PARKING METERS** OF CHAPTER 72 **PARKING REGULATIONS** BY CHANGING ITS NAME AND ADDING PROVISIONS FOR AN ELECTRONIC PAYMENT STATION PROGRAM FOR PAID PARKING LOTS AND PAID ON-STREET PARKING AND FOR OTHER REASONS

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 amends Article III **Parking Meters** of Chapter 72 **Parking Regulations** by renaming Article III **Parking Meters and Electronic Payment Stations** and adding the following definitions to §72.50 **Definitions**:

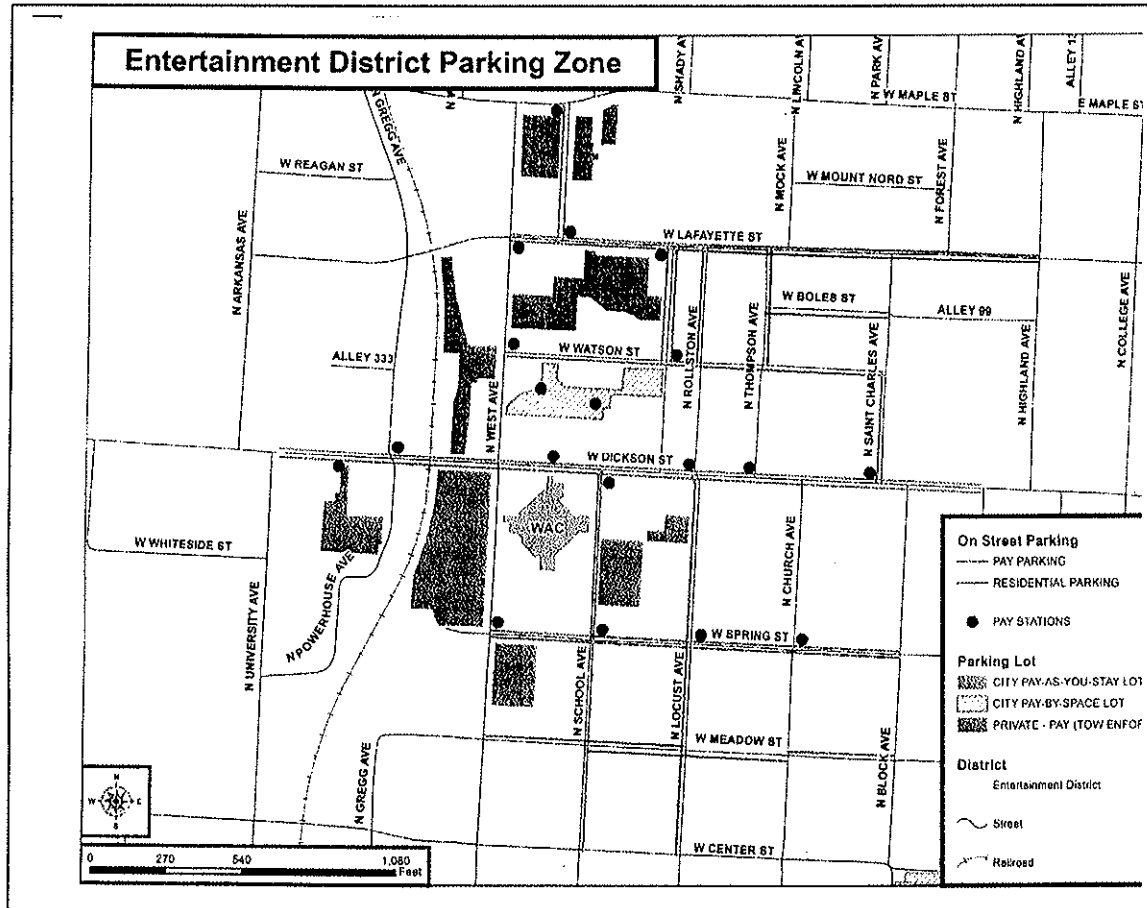
“Electronic Payment Stations’. A place where a person who has parked his vehicle in the Entertainment District Parking Zone pay parking space or lot may pay the appropriate fee for the paid park parking space.

‘Employee Parking Card.’ A card issued by the Parking Division for use only by employees of businesses operating in the Entertainment District Parking Zone which may be discounted by the Mayor up to 90% of normal parking rates for certain paid parking spaces within the Zone.

‘Entertainment District Parking Zone.’ The area depicted on the map and described on Exhibit A attached to this enacting ordinance.

‘Proximity Access Card.’ A card issued by the Parking Division for a monthly fee that allows the user to access and use gated parking lots in the Entertainment District Parking Zone on weekdays from 10:00 a.m. until 5:00 p.m.”

EXHIBIT A



Summary of Parking Spaces:	Count:
Pay Parking – Public Parking Lots	521
Pay Parking – Public On-Street	210
Mixed Use – Public Pay + Residential South	59
Residential Parking Zone South	79
Residential Parking Zone North	116
TOTAL SPACES	985

City of Fayetteville
 Parking Management Office
 113 W. Mountain St.
 Fayetteville, Arkansas
 Phone: 479-575-8280
 Fax: 479-575-8250
 Email: parking@ci.fayetteville.ar.us
 Website: www.accessfayetteville.org

Existing Law

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loading of materials, in any place marked as a freight curb loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed 30 minutes.

(Code 1965, §§119-132, 119-133; Ord. No. 1447, 6-7-65; Code 1991, §72.31)

Cross reference(s)--Penalty, §72.99.

72.32 Designation Of Bus Stops And Taxicab Stands; Use Of Such Locations

- (A) The traffic superintendent is hereby authorized to establish bus stops, bus stands, taxicab stands and stands for other passenger common-carrier motor vehicles on the public streets in such places as he shall determine to be of the greatest benefit and convenience to the public, such bus stops, bus stands, taxicab stands or other stands so established shall be designated by appropriate signs where deemed by the traffic superintendent as necessary.
- (B) The following rules shall govern the stopping, standing and parking of buses and taxicabs:
- (1) The operator of a bus shall enter a bus stop, bus stand or passenger loading zone or other location where passengers are normally discharged or picked up in such manner that the bus, when stopped to load or unload passengers or baggage, shall be in a position as close to the curb as possible, so as not to impede unduly the movement of other vehicular traffic.
 - (2) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand designated by the traffic superintendent. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious unloading or loading of passengers.
- (C) No person shall stop, stand or park a vehicle other than a bus in a bus stop or other than a taxicab in a taxicab stand when such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading and unloading passengers when such stopping does not interfere

with any bus or taxicab waiting to enter or about to enter such zone.

(Code 1965, §§19-134--19-136; Ord. No. 1447, 6-7-65; Ord. No. 2745, 8-4-81; Code 1991, §72.32)

Cross reference(s)--Penalty, §72.99.

72.33 Hotel Loading Zones

The traffic superintendent shall establish and mark hotel zones to be used solely for the loading and unloading of passengers and baggage. Standing or parking in such hotel zones shall be limited to 15 minutes and no person shall park a vehicle in a hotel zone except for the purpose of taking and discharging passengers and baggage destined for such hotel.

(Code 1965, §19-137; Ord. No. 1447, 6-7-65; Code 1991, §72.33)

Cross reference(s)--Penalty, §72.99.

72.34 Parking Signs Or Curb Markings Required

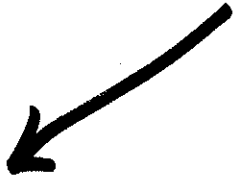
Whenever, by any provision of this chapter, a parking time limit is imposed or parking is prohibited on any street or part of street, it shall be the duty of the traffic superintendent to erect appropriate signs or to paint appropriate curb markings on such street or part of street giving notice thereof, and no such regulations shall be effective unless such signs are erected or such curb markings are painted and in place on the side or sides of the street or part of street when parking time is limited or prohibited at the time of any alleged offense.

(Code 1965, §19-138; Ord. No. 1447, 6-7-65; Ord. No. 2650, 7-15-80; Code 1991, §72-34)

Cross reference(s)--Penalty, §72.99.

72.35-72.49 Reserved

ARTICLE III PARKING METERS



72.50 Definitions

For the purpose of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Operator. Every individual shall operate a vehicle as the owner thereof, or as the agent, employee or permittee of the owner, or any person who is in actual physical control of a vehicle.

Park or parking. The standing of a vehicle, whether

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occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, receiving or discharging passengers or loading or unloading merchandise or in obedience to traffic regulations, signs or signals or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator of the vehicle.

Parking meter. Portions of streets within which the parking of vehicles are controlled, regulated, and inspected with the aid of timing devices or meters, herein referred to as "parking meters" or "meters".

Parking meter facility. Any real estate (except any public street, avenue, road, alley, or highway not specifically described herein) owned, leased, or operated by the city, upon which parking meters are installed and in operation for the use of vehicles.

Parking meter space. Any space within a parking meter facility or parking meter zone adjacent to a parking meter and which is duly designated and marked for the parking of a vehicle in accord with this article.

Parking meter zones. Portions of streets described and established by the City Council as zones within which the parking of vehicles shall be controlled, regulated, and inspected with the aid of timing devices or meters, herein referred to as "parking meters" or "meters".

Vehicle. Any device in, upon or by which any person or property is or may be transported upon a street, except a device which is operated upon rails or tracks.

(Code 1965, §19-51; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Ord. No. 4222, 2-15-00; Code 1991, §72.50)

72.51 Presumption As To Unlawful Parking In Metered Space

The indication on the parking meter that time has expired shall be presumptive evidence, as to a parked vehicle then found in the parking space regulated by such parking meter, that the owner or driver failed to deposit or cause to be deposited the required coin or coins in the meter and the indication by such meter of a "violation" shall be presumptive evidence of unlawful parking.

(Code 1965, §19-152; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.51)

72.52 Purpose Of Deposit Requirement

The coins required to be deposited in parking meters by this article are for the purpose of regulating parking and to cover part of the cost of such necessary regulation for the convenience and protection of the public.

(Code 1965, §19-153; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.52)

72.53 Depositing Slugs Prohibited

It shall be unlawful for any person to deposit or cause to be deposited in any parking meter installed under this article any slug, device or substitute for a coin of the United States of America.

(Code 1965, §19-154; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.53)

Cross reference(s)--Penalty, §72.99.

72.54 Tampering With Meters Prohibited

It shall be unlawful for any person to deface, injure, tamper with, willfully break, destroy or impair the usefulness of, or to open without lawful authority, any parking meter installed in accord with this article.

(Code 1965, §19-155; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.54)

Cross reference(s)--Penalty, §72.99.

72.55 Collections From Meters

The mayor shall assign or cause to be assigned a competent person to make collections of deposits from parking meters installed under this article. Such collections shall be delivered to the city controller and deposited to the credit of the city.

(Code 1965, §19-156; Ord. No. 931, 2-23-48; Ord. No. 1082, 6-6-55; Ord. No. 1083, 6-6-55; Code 1991, §72.55)

72.56 Loading Zones Not Prohibited

Nothing in this article shall be construed as prohibiting the city from providing for bus stops and taxicab stands and for other matters of similar nature, including the loading or unloading of trucks, vans or other commercial vehicles.

(Code 1965, §19-157; Ord. No. 931, 2-23-48; Ord. No. 1083, 6-6-55; Code 1991, §72.56)

72.57 Parking Meter Zones

- (A) The mayor, or his duly authorized representative, is hereby authorized to describe, establish and alter parking meter zones.
- (B) Parking meters shall be installed not more than two feet from the curb nor more than four feet from the front line of the parking space. Spaces shall be marked out as individual parking meter spaces for vehicles and kept clearly marked at all times. No parking meter authorized herein shall be so

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installed or a parking space so established that it will obstruct the convenient egress and ingress to any property butting on any street.

- (C) Each parking meter installed under this section, shall be set to operate upon the deposit therein of the prescribed coin or coins for the period of time prescribed as parking time limits in subsection (F) below. Each of such meters shall be so arranged so as to show or display a signal, which shall clearly indicate whether the time limit during which parking in that space is permitted has expired.
- (D) Any person parking a vehicle within a parking meter zone established by this section shall park the same wholly within the lines of the parking space marked as provided in subsection (B), and it shall be unlawful for any person to park or leave a vehicle in any such zone, unless it is wholly within such space. Where the parking meters are placed in front of parking spaces, the radiator shall be as near as possible to the parking meter controlling the space, and where the parking meters are placed alongside the parking spaces, the front fender or front wheels of the vehicle shall be as near as possible to the parking meter controlling the space.
- (E) Except in a period of emergency determined by an officer of a fire company or of the police department, or except in compliance with the directions of a police officer or traffic control signal, when any vehicle shall be parked in a space regulated by a parking meter installed under this subsection, between the hours of 8:00 a.m. and 6:00 p.m., on any day except Sunday and public holidays, the owner, operator or driver of such vehicle shall, upon entering such parking space, immediately deposit in the parking meter regulating such space one or more coins of the United States of America designated in subsection (F) below. The failure to deposit such proper coin or coins shall be deemed a violation of this section.
- (F) Any vehicle parking or standing in any parking meter space within a zone established by this section may lawfully occupy such space for one hour or less by paying the same rate as established in §72.58(H), Parking lot fees, (1) short term metered spaces.
- (1) Upon the expiration of the legal parking time as above prescribed, it shall be the duty of the owner or driver of the vehicle forthwith to remove the vehicle from the parking space, and it shall be unlawful for any person to cause, allow, permit, or suffer any such vehicle

driven by him or registered in his name to be parked or standing overtime or remain therein beyond the parking time limit prescribed by this section. It shall likewise be unlawful for any person to permit a vehicle driven by him/her or registered in his name to remain or be placed in any parking space alongside of or next to which any parking meter is placed while the parking meter is displaying a signal showing that the time for which the privilege to park in such space has been granted has expired, without making the deposit required in this section.

- (2) Each hour or portion thereof that a vehicle is parked overtime in violation of this section shall constitute a separate offense.
- (3) This section shall not be applicable on days or during hours in which subsection (E) above does not require the deposit of a coin in the parking meter.

(Code 1965, §§19-169--19-173; Ord. No. 931, 2-23-48; Ord. No. 1196, 4-6-59; Ord. No. 1775, 12-21-70; Ord. No. 2403, 12-6-77; Ord. No. 2410, 1-16-78; Ord. No. 2616, 4-1-80; Ord. No. 2769, 11-3-81; Ord. No. 4222, 2-15-00; Code 1991, §72.57)

Cross reference(s)--Penalty, §72.99.

**72.58 Off-Street Parking Meter Facilities;
Rates For City Garage**

- (A) *Established.* The following named and described real estate lying within the corporate limits of the city is hereby established as and shall constitute parking meter facilities:
- (1) Lots 8 to 15, inclusive, in Block 26 of the original plat of the city, including an alley 10 feet in width and running in an east and west direction and adjoining the southern boundary of Lots 12 to 15, inclusive, and the northern boundary of Lots 8 to 11 inclusive.
- (2) Lots 8, 9, 10, 11, 12, 13, 14 and 15 of Block 30, in the town (now city), as designated upon the original plat of said town.
- (3) Lot 9A and a part of Lot 10, in Block 29, of the original plat of the city.
- (4) Part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 16 North, Range 30 West, described as follows: Beginning at a point 84 feet south and 25 feet east of the northwest corner of the said 40-

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- acre tract, and running thence south 178 feet; thence east 70.3 feet; thence north 178 feet; thence west 70.3 feet to the point of beginning.
- (5) A part of Block 7, of the original plat of the city, more particularly described as beginning at a point 13 feet and two inches south of the northwest corner of said Block 7, running thence east 50 feet; thence south 267 feet to the point of beginning.
- (6) Lots 7, 8, 9 and 10 of Block 17 in the town (now city) as designated upon the original plat of said town.
- (7) Lots 8, 9 and 10 of Block 13 in the town (now city) as designated upon the original plat of said town.
- (8) Lots 1, 2, Lot 3, less 52.53 feet of equal and uniform width off the south side thereof, and Lot 12, less 50 feet of equal and uniform width off the south side thereof of Block 13 in the town (now city) as designated upon the original plat of said town.
- (9) Part of Block 25, in the town (now city) as designated upon the original plat of said town, and more particularly described as follows: Beginning at the northeast corner of Lot 1 in said Block 25, thence west 42 feet; thence south 49.3 feet; thence west 58 feet; thence south 58.7 feet to the center of a platted alley; thence east 100 feet; thence north 107 feet to the point of beginning.
- (10) Part of Block 15, in the original plat of the city, described as follows: Beginning at a point 127 feet west of the northeast corner of Block 15 and running thence south 206 feet to the north line of a 12-foot alley; thence west 177 feet to the east line of an alley; thence north 90 feet; thence east 22 feet; thence north 116 feet to the south line of Meadow Street; thence east 17 feet; thence south 27 feet; thence east 20 feet; thence north 27 feet to the south line of Meadow Street; thence east 118 feet to the point of beginning.
- (11) Lots numbered 12 and 13 in Block 30 of the original town (now city).
- (B) *Definitions.* For the purpose of this section "public off-street automobile parking facilities" are defined as accommodations procured or provided, or both, by public authority for the parking of motor vehicle off the street or highway, and open to public use with or without charge. Parking facilities may consist of lots, garages, or other structures and accessories; they may be surfaced facilities or facilities above or below ground.
- (C) *Marking of parking spaces.* The mayor is hereby authorized to mark off individual parking spaces in the parking meter facilities established by this section, such parking spaces to be designated by lines painted or durably marked on the curbing or otherwise.
- (D) *Installation, location, mechanical requirements, and maintenance of meters.* In the parking meter facilities established by this article, the mayor shall cause parking meters to be installed upon the curb immediately adjacent to the parking spaces marked in accord with subsection (C) above, such installation to be placed not more than two feet from the curb or concrete islands as provided, from the front line of the parking space as indicated, and the mayor shall be responsible for the regulation, control, operation, maintenance, and use of such parking meters. Each parking meter installed shall indicate by proper legend the legal parking time established by the city and, when operated, shall at all times indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking.
- (E) *Vehicles to be parked entirely within parking spaces.* At each space marked off in accord with subsection (C) above, it shall be unlawful for any person to park any vehicle across any lines or markings of such space or in such position that the vehicle shall not be entirely within the area designated by such lines or markings.
- (F) *Deposit of coin required.*
- (1) Except in a period of emergency determined by an officer of the fire or police departments, or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle is parked in any parking space alongside or next to which a parking meter is located in accord with this section, the operator of such vehicle shall, upon entering the parking meter space, immediately deposit or cause to be deposited in the meter such proper coin of the United States as is required for such parking meter and is designated by proper directions on the meter, and when required by the directions on the meter, the operator of such vehicle, after the deposit of the proper coin or coins, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. Failure to deposit such proper coin, and to set the timing mechanism

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in operation when so required, shall constitute a violation of this section. Upon the deposit of such coin (and the setting of the timing mechanism in operation when so required) the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed; provided that any person placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of the space does not exceed the indicated unused parking time.

- (2) This section shall apply every day between the hours of 8:00 a.m. and 6:00 p.m., except Sundays and legal holidays.

(G) *Deposit of coin required at gated lot.* It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked in a gated off-street parking lot without the usage fee prescribed by subsection (H) below having first been deposited.

(H) *Parking lot fees.* The following off-street parking rates are hereby established:

- (1) Short-term metered spaces (gray capped meters) - \$0.25 per hour;
- (2) Long-term metered spaces (red capped meters) - \$0.15 per hour;
- (3) Gated lots (per space) - \$30.00 per month;
- (4) Long-term parking permits (hang tags) for use at long term meters only - \$30.00 per month;

(I) *Rates for parking in city parking garages.*

(1) City parking garage on Meadow Street:

- (a) First level (covered),
\$45.00 per space/per month, or not more than \$4.00 per visit if entry not restricted.
- (b) Second level (covered),
\$45.00 per space/per month.
- (c) Third level (not covered),
\$30.00 per space/per month, or not more than \$3.00 per visit if entry not restricted.

(2) Parking garages built or purchased after January 1, 2000, including the Town Center,

shall be rented at a market rate not to exceed a uniform fee of \$70.00 per month/per space.

- (3) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked in any city parking garage without paying the parking fees prescribed above.

(J) *Overtime parking.*

- (1) If any vehicle remains parked in any parking space in a parking meter facility established by this section beyond the parking time limit set for such parking space, and if the meter indicates such illegal parking, then, and in that event, such vehicle shall be considered as parking overtime and beyond the period of legal parking time, and such parking shall be deemed a violation of this section. It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked overtime, or beyond the period of legal parking time established for any parking meter facility as herein described, or to deposit in any parking meter any coin for the purpose of parking beyond the maximum legal parking time for the particular parking meter space or to permit any such vehicle to remain or to be placed in any parking space adjacent to any parking meter while the meter is displaying a signal indicating that the vehicle occupying such space has already been parked beyond the period prescribed for such parking space.

(2) Each additional hour or fraction thereof that a vehicle is parked in violation of this section shall constitute a separate offense.

(3) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle operated by him or registered in his name to be parked in a gated off-street parking lot for more than 24 continuous hours. Each additional hour or fraction thereof that a vehicle is parked in violation of this section shall constitute a separate offense.

(K) *One-way traffic.*

- (1) The mayor is hereby authorized to determine and designate specific lanes upon the real estate described in subsection (A) above upon which vehicular traffic shall proceed in one direction only and shall cause to be placed appropriate markings, signs, barriers, or other

FAYETTEVILLE CODE OF ORDINANCES
TITLE VII TRAFFIC CODE

devices to give notice thereof. The mayor shall cause to be erected signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the centerline of the roadway.

- (2) When signs indicating the direction of traffic are erected and maintained in accord with subsection (1) above, vehicular traffic shall move only in the indicated direction, and it shall be unlawful for any person to operate any vehicle in violation of the markings, signs, barriers, or other devices placed in accordance with subsection (1) above.

(L) *Immobilization of illegally parked motor vehicle.*

- (1) *Immobilization authorized.* Employees of the traffic division and officers of the police department are hereby authorized to temporarily immobilize any vehicle which is parked in violation of any provision of this chapter and whose owner has been cited for violating these parking regulations at least twice in the preceding thirty days or has outstanding fines and costs from previous parking violations due and owing.

- (2) *Post-deprivation hearing.* When any vehicle is immobilized under the provisions of this section, the owner or operator shall have the right to a post-deprivation administrative hearing by filing a written request for such a hearing with the mayor.

(3) *Conduct of hearing.*

- (a) A hearing shall be conducted before a hearing officer designated by the mayor and shall be held within 24 hours from receipt of a written demand therefor, unless the right to a speedy hearing is waived in writing. Saturdays, Sundays, and city holidays are to be excluded from calculating said 24-hour period. The hearing officer shall not be the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to immobilize the vehicle in question.
- (b) The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right

to possession of the vehicle. The city shall carry the burden of establishing that there was probable cause to immobilize the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and to the registered owner of the vehicle. The hearing officer's decision shall in no way affect any criminal proceeding in connection with the immobilization. The decision of the hearing officer shall be final. Failure to request a post-immobilization hearing within three days from the date of immobilization, or failure to attend a scheduled post-immobilization hearing shall be deemed a waiver of the right to such hearing; and, the police department shall be authorized to have the vehicle towed to and stored at a safe place designated as an official police garage by the chief of police. The owner or operator of the vehicle shall be liable for all towing and storage fees.

(4) *Decision of hearing officer.*

- (a) The hearing officer shall only determine whether there was probable cause to immobilize the vehicle. If the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, a copy of which shall be given to the registered owner of the vehicle or his agent and to the police department and traffic division. Upon receipt of the owner's copy of such certificate, an employee of the traffic division or an officer of the police department shall remove the immobilization device from the vehicle.
- (b) If the hearing officer determines that there was probable cause for immobilizing the vehicle, the registered owner, or his agent, may obtain removal of the immobilization device by posting a bond in a reasonable amount specified by the district court. The amount of said bond shall be not less than a sum equivalent to the cumulative total of applicable fines, court costs, towing fees and storage fees. Upon presentation of a receipt evidencing the posting of said bond, an employee of the traffic division or an officer of the police department shall remove the

FAYETTEVILLE CODE OF ORDINANCES
TITLE VII TRAFFIC CODE

immobilization device from the vehicle.

(Code 1965, §§19-185--19-195; Ord. No. 1083, 6-6-55; Ord. No. 1197, 4-6-59; Ord. No. 1231, 1-25-60; Ord. No. 1242, 8-8-60; Ord. No. 1576, 11-6-67; Ord. No. 1802, 6-21-71; Ord. No. 1866, 6-5-72; Ord. No. 2613, 3-18-80; Ord. No. 2769, 11-3-81; Ord. No. 2815, 6-15-82; Ord. No. 2875, 11-23-82; Ord. No. 2914, 4-19-83; Ord. No. 2939, 9-12-83; Ord. No. 3995, §1, 9-17-96; Ord. No. 4222, 2-15-00; Code 1991, §72.58; Ord. No. 4889, 06-20-06)

Cross reference(s)--Penalty, §72.99.

72.59-72.98 Reserved

72.99 Penalties

- (A) Whoever violates any provision of this chapter for which no specific penalty is otherwise provided shall be fined as set forth in §10.99.
- (B) The penalty for each violation of §§72.13, 72.57 or 72.58(J) shall be \$5.00, if paid before the issuance of a summons, citation, or arrest warrant; otherwise, the penalty for each violation of §§72.13, 72.57, 72.58(J) shall be \$25.00; provided the penalty for each violation of §§72.13, 72.57, or 72.58(J) in excess of five parking violations in any calendar month shall be \$25.00 if paid before the issuance of a summons, citation, or arrest warrant; otherwise, the penalty for each violation of §§72.13, 72.57, or 72.58(J) in excess of five parking violations in any calendar month shall be \$50.00.

FAYETTEVILLE

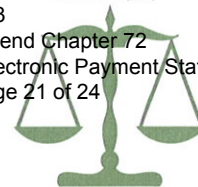
THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

*Handed out at the City Council Meeting
5/4/2010
City Council Agenda
C. 5
Amend Chapter 72 Electronic
Payment Station Program*

B/3
Amend Chapter 72
(Electronic Payment Station Program)
Page 21 of 24



LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Sondra Smith, City Clerk
Terry Gulley, Transportation Services Director

FROM: **Kit Williams**, City Attorney

A blue ink signature of Kit Williams, written over a horizontal line.

DATE: **May 4, 2010**

RE: **Correction to item #5 Parking Meters and Electronic Payment Stations ordinance, Section 8 and Section 6**

In Section 8 of the enacting ordinance and subsection (H)(3) (a) Sunday, the time for \$.50 per hour should read:

“(a) 1:00 p.m. until 6:00 p.m. – \$.50 per hour” rather than “1:00 p.m. until **5:00** p.m.” as presented in your packet.

I will read the correct language when the ordinance is placed upon its first reading.

Also, Section 6 of the enacting ordinance should add the following to the end of the sentence: “or as directed by the Mayor.” The Parking Division currently takes the cash deposits directly to the bank. I recommend additional accounting procedures for the vastly increased (estimated) parking revenues and the handling of electronic payments. These procedures should primarily be decided by the Mayor’s administration and will certainly be reviewed by our outside auditing firm (BKD) as well as our Internal Auditor and the citizens’ Audit Committee.

I will read Section 6 as follows during the ordinance's initial reading:

“The Parking Manager shall collect all deposits or electronic transactions from parking meters and electronic payment stations installed under this article and deliver them to the Accounting Department or as directed by the Mayor.”

Attached are the two pages (8 and 10) of your packet which have been corrected. I want to thank Terry Gulley who spotted these problems and informed me so we could correct them before placing the ordinance on its first reading.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.54 **Tampering with Meters Prohibited** by repealing it in its entirety and enacting a replacement § 72.54 **Tampering with Meters or Electronic Payment Stations Prohibited**.

"It shall be unlawful for any person to deface, injure, tamper with, willfully break, destroy or impair the usefulness of, or to open without lawful authority, any parking meter or electronic pay station installed in accord with this article."

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby amends § 72.55 **Collections from Meters** by repealing it in its entirety and enacting a replacement § 72.55 **Collections from Meters and Electronic Payment Stations**.

"The Parking Manager shall collect all deposits or electronic transactions from parking meters and electronic payment stations installed under this article and deliver them to the Accounting Department or as directed by the Mayor."

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby amends §72.57 **Parking Meter Zones** by repealing subsection (E) and subsection (F) in their entirety and enacting replacement subsections as shown below:

"§72.57(E) *Regulated hours for parking meters.*

(1) Within the Entertainment District Parking Zone between the hours of 10 a.m. until 2:00 a.m. Monday – Saturday and 1:00 p.m. until 2:00 a.m. on Sunday a.m. the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit sufficient money as required in §72.58(H), in the parking meter.

(2) Outside the Entertainment District Parking Zone between the hours of 8:00 a.m. until 6:00 p.m. Monday – Friday (except City holidays), the owner or driver of a vehicle upon parking the vehicle in a parking meter space shall immediately deposit sufficient money as required in §72.58(G) in the parking meter.

"(F) *Unlawful to leave vehicle parked in excess of allowed time.*

"Upon the expiration of the legal parking time paid for and allowed pursuant to this chapter during the period that paid

(b) 5:00 p.m. until 2:00 a.m. the following day – \$1.00 per hour with a maximum charge of \$5.00

(c) 2:00 a.m. until 10:00 a.m. – free parking

(2) Saturday

(a) 10:00 a.m. until 6:00 p.m. – \$.50 per hour with a maximum charge of \$3.00

(b) 6:00 p.m. until 2:00 a.m. the following day – \$1.00 per hour with maximum charge of \$5.00

(c) 2:00 a.m. until 10:00 p.m. – free parking

(3) Sunday

(a) 1:00 p.m. until 6:00 p.m. – \$.50 per hour

(b) 6:00 p.m. until 2:00 a.m. the following day – \$1.00 per hour with a maximum charge of \$5.00

(c) 2:00 a.m. until 1:00 p.m. – free parking

(4) Monthly daytime parking permits (Proximity Access Cards) for gated parking lots in the Entertainment District Parking Zone.

Persons desiring to purchase monthly access to and parking within gated lots in the Entertainment District Parking Zone between the hours of 10:00 a.m. and 4:00 p.m. on weekdays (excluding holidays) may purchase a Proximity Access Card for \$35.00. Any Proximity Access Card holder shall be required to pay normal hourly parking fees for any parking within the lot beyond 4:00 p.m. Special events authorized by the Mayor that require use of the gated parking lot will supersede the rights of monthly parkers during such event.

City of Fayetteville Staff Review Form

B. 4
Amend Chapter 72
(\$72.99 Penalties)
Page 1 of 6

City Council Agenda Items
and
Contracts, Leases or Agreements

4

5/4/2010

City Council Meeting Date
Agenda Items Only

Sharon Crosson
Submitted By

Parking Management
Division

Transportation Services
Department

Action Required:

An Ordinance to amend Chapter 72 Parking Regulations of The Fayetteville Code to change the fines and summons fees for parking violations in the Entertainment District Parking Zone and Downtown Square Parking Zone.

Cost of this request	\$ -	Entertainment Dist. Parking Program
	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Parking Fines
	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Off-Street Parking
	Remaining Balance	Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

Tony Gully 4-16-10
Department Director Date

Paul Kelly 4-20-10
City Attorney Date

Paul A. Baker 4-21-2010
Finance and Internal Services Director Date

Don Mau 4-21-10
Chief of Staff Date

Leonard Jordan 5/26/10
Mayor Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City
Clerk's Office

ENTERED
4-16-10 King

Received in
Mayor's Office

ENTERED
4/19/10

Comments:

left on First Reading at the 5/4/10 CC mtg.

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Director of Transportation

From: Sharon Crosson, Parking and Telecom Manager

Date: April 16, 2010, 2010

Subject: An Ordinance to Amend Chapter 72 Parking Regulations of The Fayetteville Code to Change the Fines for Parking Violations in the Entertainment District Parking Zone and the Downtown Square Parking Zone

PROPOSAL:

City staff is recommends the approval of an ordinance to change the fines for parking violations and summons fees in the Entertainment District Parking Zone and the Downtown Square Parking Zone.

RECOMMENDATION:

Violation amounts are established in relation to the cost of the parking meter rate, and are set high enough with the intent to encourage the parker to pay appropriate fee for the use of the parking space. As the parking rates have been established for the Entertainment District and Downtown Square Parking Zones, the recommended violation amounts follow the general guidelines of this concept.

An escalating violation amount for overtime parking has been proposed for all public parking in the Entertainment District and Downtown Square Parking Zones. The first offense begins at a very low fine of \$10.00; this gives careful consideration to first-time visitors of our area. The second offense increases to \$15.00; three or more offenses are \$25.00 each. Parking fines have not been increased since 2002.

The violation amounts for prohibited parking and illegally parking in a handicap space are proposed to match that of the Fayetteville Police Department which is set by the District Judge. This provides consistency in the fines issued for the same offense by both the Parking Management Division and the Fayetteville Police Department.

BUDGET IMPACT:

Implementation of this program will involve minimal program of existing equipment and software to implement the new fines. Estimated revenues generated from this change is \$313,975 per year.

Citation Rates and Enforcement Recommendation

Citations may be written up to three (3) times per day, once per Time Period as defined in Chapter 72 Parking Meter Rates & Times.

Violation	1st Offense	2nd Offense	3rd Offense and after	Summons Fee if Not Paid Within 14 Days
Overtime parking	\$10.00	\$15.00	\$25.00	\$25.00
Prohibited parking	\$70.00 (same as Police Department)			\$25.00
Handicap violation	\$195.00 (same as Police Department)			\$25.00

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE III **PARKING METERS AND ELECTRONIC PAYMENT STATIONS OF CHAPTER 72 PARKING REGULATIONS BY AMENDING § 72.99 PENALTIES**

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 amends §72.99(B) **Penalties** by repealing it in its entirety and enacting a replacement §72.99(B) **Penalties** and a new subsection (C) as shown below:

“(B) The penalty for each violation of §§72.13, 72.57 or 72.58(J) shall be \$10.00, if paid before the issuance of a summons, citation, or arrest warrant; otherwise, the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$35.00; provided the penalty for each violation of §§72.13, 72.57, or 72.58(J) for a second offense shall be \$15.00 if paid before the issuance of a summons, citation, or arrest warrant; otherwise the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$40.00; provided the penalty for each violation of §§72.13, 72.57, or 72.58(J) for a third or subsequent offense shall be \$25.00 if paid before the issuance of a summons, citation, or arrest warrant; otherwise the penalty for each violation of §§72.13, 72.57, or 72.58(J) shall be \$50.00.

“(C) Parking citations for overtime parking may not be written for the same vehicle in the same space more than three times per day.”

PASSED and **APPROVED** this 4th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

City of Fayetteville Staff Review Form

B. 5
Parking Program Personnel
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

6

5/4/2010

City Council Meeting Date
Agenda Items Only

Sharon Crosson

Submitted By

Parking Management

Division

Transportation Services

Department

Action Required:

A Resolution to approve a budget adjustment for \$498,542 for the addition of 2.5 full-time equivalent positions in the Parking Management Division and approval of all operating expenses for the implementation and funding of the Parking Program in the Entertainment District Parking Zone.

Cost of this request	\$ -	Entertainment Dist. Parking Program
(multiple)	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	(multiple)
	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Off-Street Parking
	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

Finance and Internal Services Director

Date

Received in City
Clerk's Office

Chief of Staff

Date

Received in
Mayor's Office

Mayor

Date

Comments:

Jabled to the 5/18/10 CC Mtg.

Revised January 15, 2009

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Director of Transportation

From: Sharon Crosson, Parking and Telecom Manager

Date: April 16, 2010, 2010

Subject: A Resolution to Approve a Budget Adjustment in the Amount of \$498,542.00 and the Approval of the Addition of **2.5 Full-Time Equivalent Positions** Including all Related Operating Expenses for the Entertainment District Parking Program

PROPOSAL:

City staff is recommends the approval of a resolution to approve the addition of 2.5 full-time equivalent positions including all related operating expenses for the Entertainment District Parking Program.

RECOMMENDATION:

The City Parking Management Division currently has 1 full-time and 1 half-time Parking Enforcement Officers that provide parking enforcement services to 859 monitored parking spaces. These spaces are monitored 50 hours per week; 7:00am to 5:00pm weekdays. The new parking program will add an additional 985 monitored parking spaces and increase enforcement hours up to 112 hours per week. Enforcement during evening hours in the Entertainment District will also require two employees on the job during the same hours.

Normal work hours for the parking staff are as follows:

Monday, Tuesday – 7:00am to 10:00pm

Wednesday, Thursday, Friday – 7:00am to 2:00am the following day

Saturday – 9:00am to 2:00am the following day

Sunday – 1:00pm to 9:00pm

(Note: Work hours will vary depending on special events and Walton Arts Center show times.)

BUDGET IMPACT:

Implementation of the new Entertainment District Parking Program will require an additional 2.5 positions, operating expenses and startup costs totaling \$402,433.00 to cover expenses for the remaining 6 months of 2010. This program will generate revenues projected at \$498,542.00 for the remaining 6 months of 2010.

RESOLUTION NO. _____

A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$498,542.00 FOR THE IMPLEMENTATION AND FUNDING OF THE PARKING PROGRAM IN THE ENTERTAINMENT DISTRICT PARKING ZONE AND APPROVING THE ADDITION OF 2.5 FULL-TIME EQUIVALENT POSITIONS IN THE PARKING MANAGEMENT DIVISION FOR THE 2010 BUDGET

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 budget adjustment, a copy of which is attached to this Resolution and incorporated herein as Exhibit "A," in the total amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves the creation of two and a half (2.5) full-time equivalent positions in the Parking Management Division of the 2010 Budget as indicated on the attached Exhibit "B" which is incorporated herein.

PASSED and **APPROVED** this 4th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

City of Fayetteville, Arkansas

2010 Budget: Total Program Expenses

Parking & Telecommunications Division

6 Months in 2010: **\$402,433**

\$696,563

Division Code	Fund/Prog	GLAccount	Class	BudgetDescription	Units	Unit Desc	Amount/ Unit	Amount Desc	Total Budget	
D840	2130.9130	2130.9130.5100.00	EX20	SALARIES	1	EACH	63365	RECU	63,365	50%
D840	2130.9130	2130.9130.5103.00	EX20	OVERTIME	1	EACH	5521	RECU	5,521	50%
D840	2130.9130	2130.9130.5105.00	EX20	FICA TAXES	1	EACH	5305	RECU	5,305	50%
D840	2130.9130	2130.9130.5107.00	EX20	LIFE INSURANCE	1	EACH	222	RECU	222	50%
D840	2130.9130	2130.9130.5108.00	EX20	HEALTH INSURANCE	1	EACH	19071	RECU	19,071	50%
D840	2130.9130	2130.9130.5108.01	EX20	LTD INSURANCE	1	EACH	238	RECU	238	50%
D840	2130.9130	2130.9130.5108.02	EX20	ADD INSURANCE	1	EACH	27	RECU	27	50%
D840	2130.9130	2130.9130.5109.06	EX20	RETIREMENT SAVINGS	1	EACH	9184	RECU	9,184	50%
D840	2130.9130	2130.9130.5111.00	EX20	WORKERS COMP INSURANCE (Beginning in 2011)	1	EACH	1197	RECU	1,197	50%
D840	2130.9130	2130.9130.5200.00	EX20	Hang tags and permit stickers	1	EACH	1000	RECU	1,000	50%
D840	2130.9130	2130.9130.5200.00	EX20	Parking ticket envelopes and rolls	1	EACH	1500	RECU	1,500	50%
D840	2130.9130	2130.9130.5200.01	EX20	Copies	1	EACH	800	RECU	800	50%
D840	2130.9130	2130.9130.5210.00	EX20	Handheld citation devices	2	EACH	3000	START	6,000	100%
D840	2130.9130	2130.9130.5213.04	EX20	Unleaded Fuel	300	GALS	3.25	UNLF	975	50%
D840	2130.9130	2130.9130.5301.00	EX30	Advertisement of Entertainment District Parking Program	1	EACH	800	RECU	800	50%
D840	2130.9131	2130.9130.5302.00	EX30	Uniforms	1	EACH	700	RECU	700	50%
D840	2130.9131	2130.9130.5307.00	EX30	Annual Audit Allocation	1	EACH	350	NDIS	350	50%
D840	2130.9131	2130.9130.5310.00	EX30	AEP Electric	1	EACH	1000	RECU	1,000	50%
D840	2130.9131	2130.9130.5315.00	EX30	Electrical services	1	EACH	25000	START	25,000	100%
D840	2130.9131	2130.9130.5315.00	EX30	Signage installation services	1	EACH	5000	START	5,000	100%
D840	2130.9131	2130.9130.5315.00	EX30	Striping services	1	EACH	2000	START	2,000	100%
D840	2130.9131	2130.9130.5331.00	EX33	PTELF005_MP9999_Electric Scooter	12	MPUN	223.41	MPUN	2,681	50%
D840	2130.9131	2130.9130.5331.01	EX33	PTELF005_MP9999_Electric Scooter	12	MPUN	42.99	MPUN	516	50%
D840	2130.9131	2130.9130.5331.02	EX33	PTELF005_MP9999_Electric Scooter	12	MPUN	42.58	MPUN	511	50%
D840	2130.9131	2130.9130.5331.03	EX33	PTELF005_MP9999_Electric Scooter	12	MPUN	12.67	MPUN	152	50%
D840	2130.9131	2130.9130.5404.00	EX40	Cards/tokens for gate access	1	EACH	500	RECU	500	50%
D840	2130.9131	2130.9130.5404.00	EX40	Gate arms	1	EACH	1000	RECU	1,000	50%
D840	2130.9131	2130.9130.5404.00	EX40	Parking signs and related materials	1	EACH	1500	START	1,500	100%
D840	2130.9131	2130.9130.5404.00	EX40	Pavement markings and supplies	1	EACH	500	RECU	500	50%
D840	2130.9131	2130.9130.5404.00	EX40	Hardware maintenance on handhels	1	EACH	800	RECU	800	50%
D840	2130.9131	2130.9130.5407.00	EX40	Maintenance on revenue machines and gate controllers	1	EACH	2500	RECU	2,500	50%
D840	2130.9131	2130.9130.5407.00	EX40	Electric vehicle	1	EACH	20000	START	20,000	100%
D840	2130.9131	2130.9130.5802.00	EX40	Equipment lease \$700,000	12	MONTH	14804	RECU	177,648	50%
D840	2130.9131		EX40	Transfer to Walton Arts Center	1	EACH	289000	RECU	289,000	50%
D840	2130.9131		EX40	Infrastructure provided by Transportation	1	EACH	50000	RECU	50,000	100%

TOTAL RECURRING COSTS FOR 2010 **587,063** **292,933**
TOTAL STARTUP COSTS FOR 2010 **109,500** **109,500**

2010 PARKING REVENUE PROJECTIONS ENTERTAINMENT DISTRICT PARKING PROGRAM

Parking Lots	Location	Number of Spaces	Citation Revenue 7 days/week	Parking Fee Revenue 300 days/year 16 hours/day	Annualized Recurring	2010 Remaining 6 Months
			Avg. 112 hours/week \$275/space	\$0.50/hr + \$1.00/hr 50% capacity City Lots = 100% Revenue		
Lot 50 - City owned	West of WAC	293	\$80,575	\$351,600		
Lot 55 - City owned	Behind Brew Pub	105	\$28,875	\$126,000		
Lot 56 - City owned	South of Grubs	65	\$17,875	\$78,000		
Lot 60 - City owned	East of WAC	58	\$15,950	\$69,600		
On-Street Spaces	Entertainment District	210	\$57,750	\$252,000		
	Less Sales Tax 9.25%			-\$81,141		
Total Revenues:		731	\$201,025	\$796,059	\$997,084	\$498,542
Total Expenses:			\$700,000 Equipment	Recurring Exp.	\$587,063	\$402,433 ❄
Net Revenues:					\$410,021	\$96,109

❄ Includes Startup Costs of \$109,500

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

B. 5
Parking Program Personnel
Page 6 of 8

Budget Year	Department: Transportation Services	Request Date	Adjustment Number
2010	Division: Parking & Telecommunications	4/21/2010	
	Program: Off-Street Parking		

JUSTIFICATION TO INCREASE PROJECT / ITEM:

\$498,542 in the Off-Street Parking Fund Expense Program for the establishment of a New Parking Program.

JUSTIFICATION TO DECREASE PROJECT / ITEM (OR RECOGNIZING REVENUE):

Account Name	Account Number	Increase Budget	Decrease Budget	Project.Sub Number
SEE ATTACHED				.
				.
				.
				.
				.
				.
				.
				.
TOTAL		-	-	

Sharon Crossen 4-22-10
Division Head Date

[Signature] 4-22-2010
Budget Director Date

Tracy Gully 4-22-10
Department Director Date

Paul A. Baker 4-22-2010
Finance Director Date

Chief of Staff _____ Date _____

Mayor _____ Date _____

Requested By _____
kspringer

Budget & Research Use Only

Type: A B C D E

Description: _____
0

General Ledger Date _____

Posted to General Ledger Initial Date

Posted to Project Accounting Initial Date

Budget Adjustment Detail Backup:

Account Name	Account Number	Increase Budget	Decrease Budget	Project#	Sub#	Project Description
Rent - West Avenue Lot	2130.0913.4426.50		199,800			
Rent - Lot 55 Watson St	2130.0913.4426.55		71,600			
Rent - Lot 56 Spring&West	2130.0913.4426.56		44,300			
Rent - Lot 60 School Ave.	2130.0913.4426.60		39,600			
Rent (Entertainment District)	2130.0913.4426.XX		143,242			
Use of Fund Balance	2130.0913.4999.99	96,109				
Salaries & Wages	2130.9131.5100.00	31,683				
FICA Taxes	2130.9131.5105.00	2,653				
Overtime	2130.9131.5107.00	2,761				
Life Insurance	2130.9131.5108.00	111				
Health Insurance	2130.9131.5108.00	9,536				
LTD Insurance	2130.9131.5108.01	119				
ADD Insurance	2130.9131.5108.02	14				
Retirement Savings Plan	2130.9131.5109.06	4,592				
Office Supplies/Printing	2130.9131.5200.00	500				
Office Supplies/Printing	2130.9131.5200.00	750				
Copies And Lease	2130.9131.5200.01	400				
Minor Equipment	2130.9131.5210.00	6,000				
Fuel	2130.9131.5213.04	488				
Public Notification	2130.9131.5301.00	400				
Uniforms/Personal Equipment	2130.9131.5302.00	350				
Utilities	2130.9131.5310.00	500				
Audit Expense	2130.9131.5307.00	173				
Contract Services	2130.9131.5315.00	25,000				
Contract Services	2130.9131.5315.00	5,000				
Contract Services	2130.9131.5315.00	2,000				
Motor Pool Charges	2130.9131.5331.00	1,340				
Replacement Charges	2130.9131.5331.01	258				
Shop Overhead Charges	2130.9131.5331.02	255				
Shop Overhead Insurance	2130.9131.5331.03	76				
Traffic Control Maint	2130.9131.5404.00	250				
Traffic Control Maint	2130.9131.5404.00	500				
Traffic Control Maint	2130.9131.5404.00	1,500				
Traffic Control Maint	2130.9131.5404.00	250				
Small Equipment Maint	2130.9131.5407.00	400				
Small Equipment Maint	2130.9131.5407.00	1,250				
Vehicles And Equipment	2130.9131.5802.00	20,000				
Lease Expense	2130.9131.5309.00	88,824				
Transfer to Walton Arts Center	2130.9131.5719.00	144,500				
Parking Lot Improvements	2130.9131.5819.00	50,000				
		498,542	498,542			

AGENDA REQUEST

FOR: COUNCIL MEETING OF MAY 18, 2010

FROM:

ALDERMAN KYLE COOK
ALDERMAN MATTHEW PETTY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §72.02 Impoundment Procedures Of The Code Of Fayetteville To Clarify When The Police May Initiate A Nonconsensual Tow Of A Vehicle

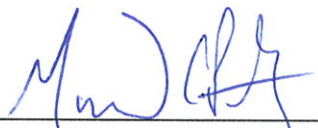
APPROVED FOR AGENDA:



Kyle Cook
Alderman

5/4/10

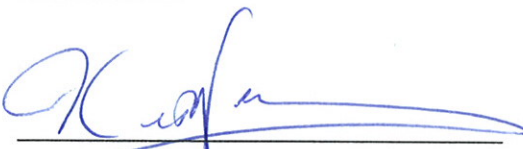
Date



Matthew Petty
Alderman

5-4-2010

Date



City Attorney
(as to form)

4-28-2010

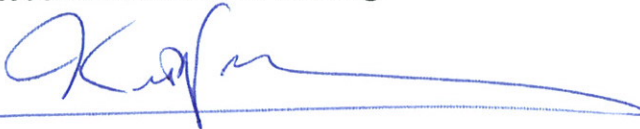
Date



TO: **Alderman Kyle Cook**
Alderman Matthew Petty

CC: **Mayor Jordan**
Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director
Sharon Crosson, Parking & Telecommunications Manager

FROM: **Kit Williams**, City Attorney



DATE: **April 28, 2010**

RE: **Parking ordinance amendments**

I have drafted a proposed amendment to **§72.02 Impoundment Procedures** which is attached. The amendment clarifies that the police can ticket and tow a vehicle blocking a driveway or fire hydrant. It also allows towing to clear a lot for a special event or if spaces are needed for previously reserved parking. It shortens the time from 72 hours to 24 hours for a vehicle illegally parked in a city lot before it can be towed and provides additional towing authority.

The new subsection (D) provides the Due Process required post-deprivation hearing for such nonconsensual police initiated tows for parking violations.

The **permit renewal periods** are NOT handled within the proposed ordinance which refers to permits merely as "currently valid permit issued by the Parking Division" The Mayor and Parking Division administratively decide about issuance periods just as they do for "Employee Parking Cards" in the paid parking ordinance. Many such details should be left to the administration which must adjust the issuance of permits as experience brings out problems and solutions or changes become apparent. Please inform the administration of your request to lengthen the residential permit renewals to six months rather than the currently proposed three month period.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §72.02 IMPOUNDMENT
PROCEDURES OF THE CODE OF FAYETTEVILLE TO
CLARIFY WHEN THE POLICE MAY INITIATE A
NONCONSENSUAL TOW OF A VEHICLE**

WHEREAS, the Fayetteville Police Department needs clear authority to initiate nonconsensual tows of vehicles obstructing driveways, over-parked in city owned lots, and for other good reasons; and

WHEREAS, the owners of any such vehicle which has been towed should have the same rights to prompt post-deprivation hearing as provided for vehicles immobilized for parking violations.

**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 amends §72.02 by repealing its title and subsection (A) and enacting a new title and subsections (A) and (D) as shown below:

**“72.02 Nonconsensual, Police-initiated Towing, Storage and
Impoundment Procedures**

“ (A) In addition to ticketing an illegally parked vehicle, the police department is hereby authorized to initiate a nonconsensual tow or otherwise remove a vehicle from a highway, street, street right-of-way, or city parking lot and have it towed to a storage facility within Fayetteville or within three miles of the city limits under the following circumstances:

- (1) When any vehicle is left unattended upon any bridge, viaduct or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(3) When any vehicle is parked illegally and left unattended upon a street or street right-of-way, and

- (a) constitutes a hazard or obstruction to the normal movement of traffic on the street,
- (b) obstructs a driveway or access to a fire hydrant,
- (c) is parked in a prohibited area or tow away zone that is so designated by a sign or other official markings, or
- (d) is parked continuously upon any street for more than seventy-two hours.

(4) When any vehicle is parked beyond the period allowed in a city parking lot and the parking space is needed for reserved parking or a special event or if parked more than 24 continuous hours beyond the period allowed.”

“(D) The owner or lessee of any vehicle towed or impounded pursuant to this section is entitled to a prompt post-deprivation hearing and all rights thereunder as provided in §72.58(L).”

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FAYETTEVILLE CODE OF ORDINANCES
TITLE VII TRAFFIC CODE

CHAPTER 72 PARKING REGULATIONS*

ARTICLE I
GENERAL REGULATIONS

72.01 Application Of Parking
Prohibitions Or Limitations

The provisions of this chapter prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device. The provisions of this chapter imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times. The overtime parking prohibitions prescribed by this chapter shall not apply to governmental vehicles.

(Code 1965, §19-139; Ord. No. 1447, 6-7-65; Ord. No. 3350, 4-29-88)

*Cross reference(s)--Parking in public parks, §97.052.

72.02 Impoundment Procedures

(A) The police department is hereby authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the police department or otherwise maintained by the city, under the circumstances hereinafter enumerated:

- (1) When any vehicle is left unattended upon any bridge, viaduct or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic.
- (2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is, by reason of physical injury, incapacitated to such an extent as to be unable to provide for its custody or removal.
- (3) When any vehicle is left unattended upon a street and is parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic; when any vehicle is left continuously and unattended upon any street, public parking deck or lot, for a period of more than 72 hours; and any time a vehicle is parked in a prohibited area that is so designated by signs or other official markings.

(4) When any vehicle is parked on a public street, parking deck or lot, designated by a sign or by curb marking as a tow-away zone.

(B) Whenever the police department removes a vehicle from a street under this section and does know or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, the police department shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and the place to which such vehicle has been removed.

(C) Whenever the police department moves a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinabove provided, and in the event the vehicle is not returned to the owner within a period of three days, written report of such removal shall be made to the state department whose duty it is to register motor vehicles. Such notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal, the name of the garage or place where the vehicle is stored.

(Code 1965, §19-140; Ord. No. 1447, 6-7-65; Ord. No. 2630, 5-6-80, Code 1991, §72.02; Ord. No. 4388, §a, 4-16-02)

(Ord. No. 4388, §1, 4-16-02)

Cross reference--Penalty, §72.99.

72.03 Parking Prohibited In Certain
Places

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

- (A) On a sidewalk.
- (B) In front of a public or private driveway.
- (C) Within an intersection.
- (D) On a crosswalk.
- (E) Within 15 feet of a fire hydrant.
- (F) Within 20 feet of a crosswalk at an intersection.

not changed

Current law ↑

CD72:3

City of Fayetteville Staff Review Form

C. 2
\$94.09 Sale of Fireworks
Page 1 of 12City Council Agenda Items
and
Contracts, Leases or Agreements

5/18/2010

City Council Meeting Date
Agenda Items Only

Fire Chief David Dayringer

Submitted By

Fire

Division

Department

Action Required:

Amend and approve a City Ordinance allowing fireworks sales within the City limits 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

4/26/2010

Date

Previous Ordinance or Resolution #

City Attorney

4-28-10

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

4-28-2010

Date

Received in City
Clerk's Office

Chief of Staff

4-28-10

Date

Received in
Mayor's Office

Mayor

4/29/10

Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

From: David Dayringer, Fire Chief

Date: April 26, 2010

Subject: Revise City ordinance Title IX Chapter 94.05 Sale and Use of Fireworks

PROPOSAL: The City of Fayetteville Fire Department has determined that the City could recover some of its cost for providing fire protection and prevention services during the time frame of the annual Independence Day holiday by amending the fireworks ordinance. Currently, citizens are buying fireworks on the City's borders and bringing them into the City for use. Due to the current availability of fireworks, there should be no increase in the number of fires caused by fireworks if the City allows them to be sold and used within City limits. The City could benefit from the revenue gained by regulating and allowing the sale of lawful fireworks within the City limits. Amending the ordinance would make the purchase of fireworks more convenient for Fayetteville citizens.

RECOMMENDATION: Staff recommends an amendment to City Code Chapter 94 Fire Prevention repealing 94.05 Sale and Use of Fireworks and enact 94.09 Sale of Fireworks. This would mirror the Springdale ordinance and provide for cost recovery of providing fire protection services.

BUDGET IMPACT: The exact amount of revenue is difficult to estimate. However, based on the history of sales in neighboring cities, a local fireworks distributor estimates sales of approximately \$900,000 the first year with the City realizing \$18,000 in sales tax and an additional \$7,000 in permit fees.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE I GENERAL PROVISIONS OF CHAPTER 94 FIRE PREVENTION OF THE FAYETTEVILLE CITY CODE BY REPEALING § 94.05 SALE AND USE OF FIREWORKS AND ENACTING A NEW § 94.09 SALE OF FIREWORKS

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 amends the Fayetteville City Code, Article I **General Provisions** of Chapter 94 **Fire Prevention** by repealing § 94.05 **Sale and Use of Fireworks** in its entirety and enacting a new § 94.09 **Sale of Fireworks** as follows:

“(A) No person shall sell or distribute any firecrackers, sky rockets, bottle rockets, sparklers, roman candles, or any other explosive used for amusement purposes, or any other device or composition used to obtain visible or audible pyrotechnic display, all commonly known as fireworks, except as specifically set out herein.

(B) Fireworks which are not prohibited under state or federal law and which are considered consumer fireworks as defined under federal law and regulations (27 C.F.R. § 555.11) may be sold between June 28th and July 5th of each year, subject to the provisions set out herein. Any person desiring to sell fireworks must obtain a permit. The fee for each permit shall be \$500.00 per location. One-half of the permit fee (\$250.00) shall be placed in a revenue account of the Fayetteville Fire Department to cover the cost of fire inspections of locations where fireworks are sold. Before a permit to sell fireworks is issued, the person applying for the permit must show proof that such location will be insured by a licensed insurance company for \$1,000,000.00 premises liability. A vendor must contact the Fayetteville Fire Department and arrange for an inspection to insure compliance with this Code and any other applicable fire code requirements, prior to the sale of fireworks.

(C) No fireworks shall be sold or stored within a permanent structure. Furthermore, no fireworks stand shall be located at any place other than one in full compliance with all provisions of law.

(D) The sale of any aerial fireworks attached to a stick shall not be permitted.

(E) Fireworks stands shall not be located within 250 feet of a fuel dispensing facility and must be set back at least 50 feet from the nearest portion of the street or highway.

(F) Fireworks shall not be sold to a person less than sixteen (16) years of age.

(G) At all locations where fireworks are sold a sign shall be conspicuously posted, visible to the public, which states, "THE DISCHARGE OF BOTTLE ROCKETS OR FIREWORKS THAT TRAVEL ON A STICK IS PROHIBITED IN THE CITY OF FAYETTEVILLE."

PASSED and APPROVED this 18th day of May, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Chief,

I had a discussion today with Andy Clark. He is a resident of Fayetteville and is the owner of Uncle Sam's Fireworks in Hindsville. Uncle Sam's has been selling fireworks in Northwest Arkansas for over twenty years. Mr. Clark is available on request for more detailed discussion if needed.

The focus of our discussion was about selling fireworks within the City limits of Fayetteville and what the City could expect in revenue. If an ordinance could be worked out similar to Springdale's, Uncle Sam's would try to have about five locations. Mr. Clark said there would be about five other companies capable of starting a similar number of locations if they could secure the property. So the estimate on the number of locations would be about 30. Estimated sales, depending on location, would average around \$30,000 per. That would be around \$900,000 in total sales. This would result in \$18,000 sales tax revenue for the City. This total does not include the "independent" sellers that may open.

I called Assistant Chief Kevin McDonald of the Springdale Fire Department. I also looked up Springdale's fireworks ordinance and attached a copy. Springdale has allowed fireworks sales for about 5 years now. They were like Fayetteville in that they were surrounded by fireworks locations just outside of their City limits. People in and around Springdale were buying fireworks within site of the City limits with no sales tax money going to Springdale.

The first year Springdale sold 14 location permits at \$500 each. In 2009, over 30 permits were sold. We could probably expect a similar start and progression in Fayetteville.

Suggestions

1. Develop an ordinance similar to Springdale's
2. Include a \$500 permit fee.
3. Look at adding an additional 2% sales tax just for fireworks. This would result in a total sales tax of 11.25%. 4% of that would be City tax. This would be a similar situation as the 2% hotel/motel/restaurant (HMR) tax that Fayetteville charges. Would result in \$36,000 sales tax revenue for the City when using the \$900,000 sales estimate.
4. Look at ways some of the permit money might be dedicated to the fire department budget.

Ordinance suggestions that are not in Springdale's ordinance

1. Consider the possibility of a mandatory set up time for locations as well as not allowing set up after a set date. This would allow the fire marshal to schedule inspections at a set date.

Sec. 46-56. - Fireworks.

(a) (1)

No person shall sell or distribute in the city any firecrackers, sky rockets, bottle rockets, sparklers, roman candles, or any other explosive used for amusement purposes, or any other device or composition used to obtain visible or audible pyrotechnic display, except as specifically set out herein.

(a) (2)

Fireworks which are not prohibited under law (Ark. Code Ann. § 20-22-701, et seq.) and which are considered consumer fireworks as defined under federal law (27 C.F.R. § 555.11) may be sold in the city between June 28th and July 5th of any year, subject to the provisions set out herein. Any person desiring to sell fireworks within the city must obtain a permit through the city clerk's office. The charge for each permit shall be \$500.00 per location. One-half of the permit fee (\$250.00) shall be placed in the revenue account of the city fire department to cover the cost of fire inspections of locations where fireworks are sold. Before a permit to sell fireworks is issued by the city clerk, the person applying for the permit must show proof that such location will be insured by a licensed insurance company for \$1,000,000.00 premises liability. A vendor must contact the Springdale Fire Department and arrange for an inspection by the fire marshal to ensure compliance with city ordinance and fire code requirements prior to the sale of fireworks.

(a) (3)

No fireworks shall be sold or stored within a permanent structure of the city. Further, no fireworks stand shall be located anywhere within the city, except in a C-2, C-5 or A-1 zone provided the A-1 property has frontage on a federal or state highway. All locations where fireworks are sold must comply with all Arkansas and federal law, as well as the 2000 International Fire Code and the 2002 Arkansas Fire Prevention Code, as adopted by the city.

(a) (4)

No person selling fireworks within the city shall be allowed to sell any fireworks which travels on a stick, as these particular fireworks are prohibited to be discharged within the city.

(a) (5)

No fireworks stand shall be located within 250 feet of a fuel dispensing facility and all fireworks stands must have at least 50-foot setback from the street or highway.

(a) (6)

No person under the age of 16 shall be allowed to purchase fireworks within the city.

(a) (7)

All locations where fireworks are sold within the city shall post a sign, visible to the public, which states, "The discharge of bottle rockets or fireworks that travel on a stick are prohibited in the City of Springdale."

(b) (1)

No person shall discharge at any place, public or private, within the city boundaries, any aerial firework(s) which travels on a stick, except a permit may be obtained for a public display of fireworks, as more particularly set out in this section.

(b) (2)

The fire chief shall permit the use of fireworks for outdoor public display when all provisions of NFPA 1123 are met and after all necessary permits have been issued. If any such permit is issued, any such display shall be handled by a competent operator approved by the fire chief, and shall be of such character and so located, discharged or fired so as not to be hazardous to property or endanger any person. No such permit shall be authorized except for the following:

A.

Between the hours of 8:00 a.m. and 11:00 p.m. on July 1st through July 4th of any year; or

B.

At professional sporting events in a P-1 zone provided that the property adjacent to the P-1 zone is commercial or agricultural, between the hours of 6:00 p.m. and 11:00 p.m. on April 1st through September 30th of any year; or

C.

Small test firing to determine the feasibility of the discharge site for future public display, provided no salute shells are discharged and provided that any such test firings shall be between the hours of 6:00 p.m. and 10:00 p.m., between April 1st and June 30th of any year.

(c)

No fireworks, including firecrackers, sparklers, or Roman candles may be discharged within the city except as set out as follows:

(c) (1)

All legal fireworks, except aerial fireworks that travel on a stick, may be discharged on private property between the hours of 8:00 a.m. and 10:00 p.m. on July 1st through July 4th of any year, provided that the owner of the private property consents to such discharge of the fireworks; and

(c) (2)

A person of at least 21 years of age shall supervise the discharge of any fireworks if any person participating in the activity is under the age of 16.

(Code 1973, § 11-6; Ord. No. 2464, §§ 1—3, 3-12-96; Ord. No. 3210, 5-14-02; Ord. No. 3339, § 1, 6-10-03; Ord. No. 3689, 5-24-05; Ord. No. 4131, 11-13-07; Ord. No. 4317, § 1, 5-12-09; Ord. No. 4369, § 1, 9-17-09)

ORDINANCE NO. 2007-27

AN ORDINANCE TO AMEND ORDINANCES 1988-3.1 AND 2002-3.1(A) REGARDING THE SALE AND USE OF FIREWORKS IN THE CITY OF FARMINGTON, ARKANSAS

WHEREAS, ordinances 1888-3.1 and 2002-3.1(A) contain regulations pertaining to the sale and use of fireworks in the City of Farmington; and

WHEREAS, the Farmington Planning Commission and the Farmington City Council have reviewed the existing ordinances in an effort to provide for the sale of fireworks in certain areas of the city and to regulate the sale and use of fireworks for the safety of the citizenry;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FARMINGTON, ARKANSAS:

SECTION 1: Sales of Fireworks:

(a) No individual, partnership, corporation or other entity shall sell or distribute fireworks, bottle rockets, roman candles, sky rockets or any other explosive or combustible device used for amusement and visible or audible pyrotechnic display, except as specifically set forth herein.

(a) (1) Fireworks which are defined as consumer fireworks under federal law, 27 C.F.R. §555.11 and which are not prohibited under Arkansas law in A.C.A. §20-22-701, et seq., may be sold in areas of the city zoned C-1, C-2, A-1 and I-1 after meeting the following requirements:

(2) Individuals, partnerships, corporations or any other organization or entity must first acquire a conditional use permit each year at a cost of \$250. One-half (1/2) of the permit fees shall be placed in the

revenue account of the Farmington Fire Department for the cost to perform its enforcement procedures described herein.

(3) Individuals, partnerships, corporations or any other organization or entity must provide proof of premises liability insurance covering the named insured for bodily injury and/or property damage arising out of the use and maintenance of the insured premises with \$1,000,000 in coverage for each occurrence and a minimum of \$3,000,000 in general aggregate coverage.

(4) The Farmington Fire Department must approve the location of the fireworks stand in accordance with the following requirements:

(A) The fireworks are not being stored or sold in a permanent structure in the city, and

(B) The fireworks stand is in compliance with Arkansas and federal law and the 2000 International Fire Code, and approved by the Farmington Fire Department.

(C) No fireworks stand shall be located within 250 feet of a fuel dispensing facility and all fireworks stands must have a setback of a minimum of 50 feet from the nearest street or highway and 200 feet from school grounds.

(D) The Farmington Fire Chief shall have the authority to inspect firework stands at any time. Should a firework stand be out of compliance with applicable state and federal law or the 2000 International Fire Code, the Fire Chief shall have the authority to discontinue the further sale of fireworks. In the event the Farmington Fire Chief discontinues the sale of fireworks, the individual, partnership, corporation or other entity shall be required to reapply for a renewal of the permit and be approved by the Farmington Planning Commission for a conditional use permit to continue the sale of fireworks in the city.

(b) Fireworks may be sold on June 21 through July 7 and December 21 through January 3 of each year, provided the conditional use permit for the fireworks stand has been approved by the Farmington Planning Commission and the location has been approved by the Farmington Fire Department.

SECTION 2: Use and Display of Fireworks:

(a) It shall be unlawful to bring in, possess, explode, discharge or cause to be discharged or burn any fireworks, including but not limited to firecrackers, skyrockets, bottle rockets, roman candles or other devices or explosives or flammable materials on city property.

(b) Fireworks may be discharged in the city on July 3rd and July 5th from 10:00 a.m. to 10:00 p.m.; from 10:00 a.m. to 12:00 midnight on July 4th; from 10:00 a.m. to 10:00 p.m. on December 24th and December 25th; and from 10:00 a.m. on December 31st (New Years Eve) to 1:00 a.m. on January 1st (New Years Day). No fireworks may be discharged during the remainder of January 1st, New Years Day. The dates and times prescribed herein shall not apply to fireworks displays sponsored or approved by the City of Farmington.

(c) All debris caused by and remaining after the discharge of fireworks shall be removed from the city streets within 24 hours after the time with which the discharge was allowed. All freestanding tents and structures used to sell fireworks and any resulting debris shall be removed within 72 hours from the premises on which fireworks were sold.

(d) The Farmington Fire Chief or Mayor shall be authorized to declare an emergency and prohibit all use of fireworks upon a determination that such use would create a fire hazard due to dry conditions.

SECTION 3: Penalties:

(a) Whoever violates any provision of this ordinance for which no specific penalty is otherwise provided shall be punished by a fine of not more than \$50 for each violation. If the violation of this ordinance is continuous in respect to time, the penalty for allowing the continuation thereof shall not exceed \$250 for each day that the same is unlawfully continued; provided, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the State of Arkansas.

(b) The Farmington Fire Chief shall be authorized to issue a citation to any person violating any provision of this ordinance.

SECTION 4: Repealing Clause. All other ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: Severability Clause. In the event any portion of this ordinance is declared inoperative or invalid as a result of a statute or judicial decision, then only that portion expressly so declared to be inoperative or invalid shall be affected thereby and all other provisions hereof shall remain in full force and effect.

PASSED, APPROVED and IN EFFECT this 11th day of February, 2008

APPROVED:

BY:

Ernie Penn
Ernie Penn, Mayor

ATTEST:

BY:

Kelly Thomas
Kelly Thomas, City Clerk

AGENDA REQUEST

FOR: COUNCIL MEETING OF May ¹⁸~~08~~, 2010

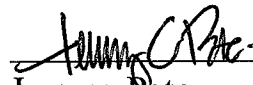
FROM:

LIONELD JORDAN, MAYOR

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

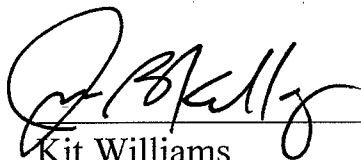
An ordinance to amend §163.14 **Revocation or Change of Conditional Use** of the Unified Development Code of Fayetteville to enact a new subsection (E) *Periodic Reviews*

APPROVED FOR AGENDA:



Jeremy Pate
Development Services Director

05-06-2010
Date



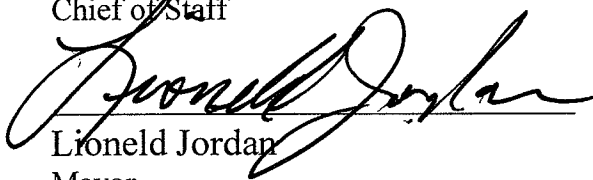
Kit Williams
City Attorney

5-6-10
Date



Don Marr
Chief of Staff

5-6-10
Date



Lioneld Jordan
Mayor

5/6/10
Date

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff

From: Jeremy Pate, Development Services Director X

Date: May 06, 2010

Subject: Periodic Review of Conditional Use Permit

RECOMMENDATION

Staff recommends the City Council consider adoption of a amendment to the UDC §163.14, to allow a periodic review of a conditional use permit, by petition, under certain conditions.

BACKGROUND

The Mayor, City Attorney and staff have been working together to draft a code amendment to amend the existing §163.14 *Revocation or Change of Conditional Use* section of the UDC. Current conditional use permits that the Planning Commission approve have specific conditions of approval often listing hours of operation, the specific use proposed on the property, how much of the property/structure can be utilized for said use, what screening or buffering is required, noise requirements, number of employees, etc. However, in a random evaluation of conditional use permit files that are currently archived (pre-year 2000), staff was able to easily locate ten (10) older conditional use permits that contained either no conditions or very few attached to the use. It is evident that many more exist. Examples include:

- 1994 Lokomotion, College Avenue – one condition, to review the use again in one year
- 1991 Youthbridge Emergency Youth Shelter and Rehabilitation Facility, Crossover – no conditions
- 1993 National Home Center/Home Depot, Shiloh – no conditions
- 1989 Church in mobile home in Sunbridge Mobile Home park – no conditions
- 1978 Recycled Aluminum Furnace Operation, Poplar – no conditions
- 1976 In-home day care, Winwood – one condition, maximum 16 children
- 1990 Mini-storage, Wedington – no conditions
- 1992 Skateboard Park, Prairie – no conditions
- 1991 Bed & Breakfast, S. Hill – no conditions
- 1990 Antique Store, Mission – one condition, stripe parking spaces

The potential trouble with approvals of this nature - which by their very nature tend to need conditions of approval in order to make them compatible or they would be a “use by right” in that particular zoning district – is that in time the neighborhood surrounding the use may change, or the conditional use itself may evolve into something that was not anticipated when the application was filed, reviewed and approved. The most reasonable

solution to this is to take the item before the Planning Commission to review the use and ensure it remains compatible. Under current ordinances an approved conditional use permit may be reviewed under the following procedure: the Zoning and Development Administrator must receive a complaint of a violation, investigate, determine that a substantial violation of the Conditional Use Permit conditions is occurring, notify the owner to correct it and the owner chooses not to remedy that violation. Only then can the item be reviewed by the Planning Commission. However, it is evident that many conditional uses within the city could never meet this standard, due to the fact that there are little or no qualifying conditions to be violated when the use was granted by the Planning Commission. Given the fact that there are evidently many such uses within our City, staff feels it is proper to amend the existing ordinance to allow for these types of uses to be revisited, when appropriate.

DISCUSSION

The proposal is to add a "periodic review" subsection to §163.14. This review could only occur once every five years, upon petition by an adjacent property owner plus 50% of the property owners within 100 feet of the conditional use boundary. The idea is to have the periodic review be a procedure for the Planning Commission to review the compatibility of a conditional use permit if the majority of the neighborhood surrounding the use feels adversely affected. After a review, the Planning Commission may approve the use as is, add conditions of approval, or revoke the conditional use permit if it determines there are no conditions that could make the use compatible under existing standards.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE AMENDING §163.14 OF THE UNIFIED DEVELOPMENT CODE TO PERMIT A PERIODIC REVIEW OF CONDITIONAL USE PERMITS AS DESCRIBED HEREIN.

WHEREAS, the Fayetteville Planning Commission and Board of Directors have adopted hundreds of conditional use permits over many decades; and

WHEREAS, older approved conditional use permits tend to be less detailed and oftentimes did not include conditions of approval; and

WHEREAS, some conditional use permits need to be reviewed at times for compatibility with the surrounding neighborhood; and

WHEREAS, the periodic review of a conditional use permit should be limited to review items that are in the public interest;

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 amends §163.14 *Revocation or Change of Conditional Use* to add the following subsection “E”:

§163.14 Revocation or Change of Conditional Use

“(E) *Periodic review.* In addition to the consideration of substantial violation provisions of (A), (B), and (C), the Planning Commission may periodically review and reconsider a conditional use permit under the following criteria:

(1) Receipt of a petition to review an approved conditional use permit from an adjacent property owner and 50% or more of the property owners within a 100-foot radius of the property on which the conditional use permit has been granted, in a form provided by the Planning Division. The property owners signing the petition must provide the reasons for which they feel reconsideration is warranted and how they are adversely affected by the approved conditional use permit.

(2) Upon receipt of a verified petition, the Planning Commission may review the conditional use permit and either approve the conditional use as it exists, modify the conditional use with new or altered conditions to achieve a greater degree of compatibility with adjacent

properties, or revoke the conditional use permit where additional conditions would not achieve a level of compatibility acceptable to the Commission.

(3) Appeals from the decision of the Planning Commission under this subsection shall follow the requirements of §155 Appeals of the Unified Development Code, for conditional use permits.

(4) The right to a periodic review of a conditional use under this subsection may only be exercised five years or longer after the conditional use permit was granted. No periodic review may be conducted more than one (1) time in a five (5) year period.

(5) This periodic review procedure is not applicable for wireless communication facilities and vital government facilities.”

PASSED and APPROVED this day of , 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

TITLE XV. UNIFIED DEVELOPMENT CODE

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) 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-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; Ord. 4856, 4-18-06)

163.14 Revocation Or Change Of Conditional Use

CD 33:11

Current law

Fayetteville Code of Ordinances

- Current Law** →
- (A) Upon receipt by the Planning Department of a written complaint by a Fayetteville resident that a holder of a conditional use has substantially violated or is violating any term or condition of the conditional use, the Planning Department shall investigate this complaint to determine if it is substantiated.
 - (B) If the Planning and Zoning Administrator determines that the complaint is substantiated, official notification by letter outlining the violation shall be sent to the holder of the conditional use requiring immediate compliance with all conditions and terms of approval of the conditional use and noting the substantiated complaint.
 - (C) If the Zoning and Development Administrator determines that the holder has violated the terms of the conditional use and failed to promptly and voluntarily correct its failures, the Zoning and Development Administrator shall refer the existing conditional use to the Planning Commission for its review. After a hearing for all interested persons, the Planning Commission may amend or add conditions to the conditional use, may revoke a conditional use for substantial violations of the existing terms and conditions of the conditional use, or may reaffirm that the holder has complied with all terms of its conditional use.
 - (D) Except in extraordinary circumstances, the Zoning and Development Administrator shall not refer any alleged violations of a specific conditional use to the Planning Commission more often than once per year.

rd. 4837, 02-21-06)

163.15 Transit System Shelters

- Add (E)** →
- (A) *Intent.* Transit System Operators may apply for a conditional use permit to allow for the location of bus shelters in, or adjacent to, the right of way of public streets subject to the following conditions and requirements. A variance is not required for transit system shelters located outside of the right-of-way but within the building setback. Transit system benches that are not sheltered from the elements may be located at bus stops with the approval of the Director of Development Services.
 - (1) Requirements for locating, constructing and maintaining a transit system bus shelter are as follows:
 - (a) The bus shelter conditional use permit application shall require a site plan illustrating the location and dimensions of the proposed structure, the street

right of ways and any existing utility easements.

- (b) A transit system shelter or structure shall not be required to meet the building or master street plan setback, as these structures are intended to be located in a convenient area for the use by the general public awaiting transit.
 - (c) The City may require that the transit system provide a provision authorizing the City to remove, without liability, any part of a facility for which a permit has been issued if there is a lawful need for the site or for access to the site.
 - (d) The City may require the transit system to provide public liability insurance.
 - (e) The City may require that the transit system provide and pay for any necessary or essential traffic and safety studies.
- (2) The Planning Commission may issue a bus shelter conditional use permit based on the following findings:
 - (a) The improvement or facility will not be located, extend onto, or intrude on the roadway or the sidewalk to such an extent as to impede the area needed for vehicular traffic or pedestrian use.
 - (b) The improvement or facility will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the street or sidewalk.
 - (c) The design and location of the facility includes all reasonable planning to minimize the potential for injury or interference to the public in the use of the municipal street or sidewalk.
 - (3) Additional bus shelter elements may be required to be installed and maintained by the Transit System Operator. These may include but shall not be limited to:
 - (a) A concrete pad on which to locate the shelter and accompanying street furniture.
 - (b) Transit system shelters located within 20 feet of an existing street or parking lot light may not have additional lighting requirements.
 - (c) An integrated or detached "wayfinding totem" to identify location and bus

ALDERMAN AGENDA REQUEST FORM

C. 4
Amend Chapter 178
Outdoor Vendors
Page 1 of 10

FOR: COUNCIL MEETING OF May 18, 2010

FROM: Matthew Petty

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

ADM 10-3549: (UDC AMENDMENT CH. 178: Outdoor Vendors):

An ordinance to amend the Unified Development Code to allow for the sale of locally produced arts and crafts and to permit applicants to request larger vending carts for locations approved as a conditional use by the Planning Commission.

APPROVED FOR AGENDA:

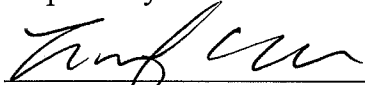


Council Member **Matthew Petty**

4-29-2010

Date

Prepared by:



Leif Olson

Associate Planner

4-27-2010

Date





THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Director &

From: Leif Olson, Associate Planner

Date: April 27, 2010

Subject: Unified Development Code amendment to Ch. 178: Outdoor Vendors

PROPOSAL:

The Development Services Division recommends approval of an ordinance to amend the Unified Development Code Chapter 178: Outdoor Vendors in order to allow for the sale of locally produced arts and crafts and to permit applicants to request larger vending carts for locations approved as a conditional use.

RECOMMENDATION:

Alderman Petty requested that the City consider amending Chapter 178: Outdoor Vending by allowing sidewalk vendors to sell locally produced arts and crafts and to allow applicants to request carts that are larger than the minimum standard for applicants seeking a permit through the conditional use permit process. Alderman Petty, the City Attorney and Staff worked on drafting the proposed language for this UDC amendments. Development Services staff supports the proposed UDC amendments. This item was discussed at the April 21, 2010 City Council Ordinance Review Committee meeting and it was forwarded to the full City Council with a recommendation for approval with a 3-0-1 vote.

BUDGET IMPACT:

No budget impact.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT CODE OF THE CITY OF FAYETTEVILLE, TO AMEND CHAPTER 178: OUTDOOR VENDORS TO ALLOW FOR THE SALE OF LOCALLY PRODUCED ARTS AND CRAFTS BY OUTDOOR VENDORS ON PUBLIC SIDEWALKS AND TO PERMIT CONSIDERATION OF LARGER VENDING CARTS FOR SPECIFIC LOCATIONS AS A CONDITIONAL USE PERMIT BY THE PLANNING COMMISSION.

WHEREAS, the City of Fayetteville adopted an ordinance supporting outdoor vendors in 2008; and

WHEREAS, a member of the City Council has requested that the City consider allowing sidewalk vendors to sell locally produced arts and crafts; and

WHEREAS, staff recommends that the Planning Commission, by conditional use permit, be given the additional flexibility to permit larger vending carts where they are appropriately located and meet all pedestrian and ADA requirements,

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 amends the Unified Development Code §178.03(D)(1) by inserting the following subsection language:

178.03(D)(1)(c) "*Arts and Crafts*: Only objects of art or craft produced and sold by a local artist or craft person may be sold by street vendors."

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends the Unified Development Code §178.03(F)(1) by repealing the existing language and replacing with the following language:

178.03(F)(1) "The application meets all other criteria established herein for a sidewalk vendor, with the exception that the applicant may request that the cart, and/or operating area, may be larger than the dimension required in this chapter."

PASSED and APPROVED this ____ day of ____, 2010.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk

**TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 178: OUTDOOR VENDORS**

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TITLE XV UNIFIED DEVELOPMENT CODE

CHAPTER 178: OUTDOOR VENDORS

178.01 Purpose

It is the purpose of this chapter to promote and encourage open air retail environments, while preserving and protecting the health, safety and welfare of citizens by promoting opportunities and regulations for the creation of said exceptions within the City.

(Ord. 5185, 10-7-08)

178.02 Sidewalk Cafes

(A) Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain developed and developing areas in a traditional town form are unique and that certain public amenities are not inconsistent with the underlying dedication for the public right-of-way, as long as they do not impede travel or interfere with the public safety. This ordinance is designed to encourage pedestrian activity and make the urban environment more attractive.

(B) Sidewalk Café Authorization. The Planning Commission may issue a conditional use permit allowing a sidewalk café on part of a specified sidewalk after the applicant has notified adjoining property owners. In addition to the general conditional use requirements, the Planning Commission shall ensure that no conditional use permit is granted, unless:

- (1) The proposed sidewalk café will not unduly impact or impede the public's ability to travel upon or use the sidewalk and any other affected public right-of-way, including public utility easements.
- (2) Any necessary costs to relocate a utility or widen the existing sidewalk to accommodate the proposed sidewalk café must be paid by the sidewalk café applicant.
- (3) The sidewalk café applicant may be required to post a surety bond or letter of credit sufficient to cover the cost of removing the sidewalk café if necessary for the city or utility company to access pipes, lines, or other facilities.
- (4) The sidewalk café applicant must consent that the city or utility company may remove, without liability or compensation, part or all of the sidewalk café, if necessary, to get access to a utility facility or improvement.

(C) Requirements: Sidewalk cafés shall meet the following requirements in order to be approved:

- (1) Applicants requesting a license must provide a detailed site plan and written description illustrating the type, location and dimensions of all furniture to be placed in the public right-of-way. Sidewalk cafes may not be enclosed by fixed walls or other permanent structures.
- (2) Sidewalk cafes must be open to the air, except that an awning or canopy conforming to requirements established by the Unified Development Code and Building Code may be constructed over the sidewalk café. In order to provide sufficient pedestrian clearance, umbrellas must have 7 feet of free and clear space from the sidewalk surface to the lower edge of the umbrella.
- (3) Property shall be kept clean and free of refuse with no permanent trash containers placed on the premises.
- (4) All furnishings and fixtures must be of a temporary nature and shall be removed from the public right-of-way and stored inside during non-operational times.
- (5) For sidewalk cafes using City right-of-way for operation, there shall be a minimum of five feet or 50% of the total sidewalk width for clearance, whichever is greater, to provide adequate and unobstructed pedestrian movement.
- (6) If at any time the sidewalk café is determined to impede travel or interfere with the public safety, as determined by the Planning Division, the sidewalk cafe shall be removed.
- (7) One A-frame sandwich/menu board is permitted within the sidewalk cafes' border during hours of operation, subject to the applicable regulations in Ch. 174: Signs for the same.

(Ord. 5185, 10-7-08)

178.03 Sidewalk Vendors

(A) Purpose. Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain development patterns with wide sidewalks are unique and that certain public amenities are not inconsistent with the

underlying dedication for the public right-of-way, as long as they do not impede travel or interfere with the public safety. This ordinance is designed to regulate open air vending of goods on public rights-of-way.

- (B) Sidewalk Vendor Authorization. The Zoning and Development Administrator may issue a permit for a sidewalk vendor to use a specific sidewalk or plaza location for specified hours to sell specified goods for up to a one year period. In addition to the general use requirements, the Zoning and Development Administrator shall ensure that no permit is granted unless:

- (1) The applicant has obtained all necessary permits from State or County authorities, including any Transient Merchant permit requirements.
- (2) The applicant has submitted a sales and use tax number, sales tax remittance forms and an affidavit that the applicant has fully paid all sales and use taxes during the previous twelve months, if applicable.
- (3) The applicant has filed a HMR tax remittance form with the City of Fayetteville, when applicable.
- (4) The applicant has notified all adjacent property owners, by certified mail, of the application.

- (C) Permit Application. Each application for a permit to conduct business on a sidewalk shall be accompanied by a \$100 application and permit fee. Permits issued after July 1st shall be accompanied by a \$50 application and permit fee. Each permit will expire at 3 a.m. on January 1st following the year issued. The permit fee shall be collected prior to issuance of the permit

- (1) Application for a sidewalk vendor permit shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered.
 - (c) A valid copy of all necessary permits required by State and County health authorities.

- (d) Proof of application for remittance of HMR tax to the City of Fayetteville.

- (e) Means to be used in conducting business, including but not limited to, a description of any mobile container or device to be used for transport or to display approved items or services.

- (f) A site plan indicating the location and dimensions of the proposed use and device or pushcart.

- (g) A detailed scale drawing, picture or diagram and material specifications of the device or pushcart to be used.

- (2) The permit issued shall not be transferable in any manner.

- (3) The permit is valid for one sidewalk vending location only.

(D) Permitted Vending Products and Goods.

- (1) The City of Fayetteville permits the following types of goods for street vending in approved locations:

- (a) Cut Flowers
- (b) Food and Beverage

(c) Arts and Crafts: Only objects of art or craft produced and sold by a local artist or craft person may be sold by street vendors.

- (2) All goods being sold from sidewalk vendors shall:

- (a) Be located within the permitted area and be attended at all times. Sidewalk vendors shall not conduct transactions with vehicular traffic located in the right-of-way.
- (b) Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk.
- (c) Involve a short transaction period to complete the sale or render the service.
- (d) Not cause undue noise or offensive odors.
- (e) Be easily carried by pedestrians.

(E) Location Requirements. Sidewalk vendors are permitted in specific locations in Fayetteville as a use by right. These locations have been determined by the City Council to have adequate sidewalk width, pedestrian traffic flow, and they minimize potential conflicts with existing businesses. Sidewalk vendors are not permitted to operate on days / times associated with special events, unless they have been approved and granted a Special Events Permit from the organization coordinating the special event. Maps of approved locations are available in the Planning Division. The locations where street vending is allowed as a permitted use are:

- (1) North and West sidewalks in front of the Walton Arts Center. Sidewalk vendors may locate along West Avenue and Dickson St. in front of the Walton Arts Center
- (2) Inside of the Fayetteville Square. Sidewalk vendors may locate along sidewalks on all sides of the interior of the downtown Fayetteville Square. On days / times that the Farmers' Market or other special events operate, sidewalk vendors shall only be permitted if approved through the Farmers' Market or Special Event Permit process.

(F) Conditional Use Permit. If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a conditional use permit must be obtained. Upon receipt of a conditional use permit application, the Planning Commission shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making this determination, the Planning Commission shall consider the following criteria:

- (1) The application meets all other criteria established herein for a sidewalk vendor, **with the exception that the applicant may request that the cart, and/or operating area, may be larger than the dimension required in this chapter.**
- (2) The number of permits issued for the street vending location shall not exceed the capacity of the area in terms of maintaining the use of the sidewalk as a public right-of-way. The Planning Commission shall consider the width of sidewalk, the proximity and location of

existing street furniture, including, but not limited to: signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as the presence of bus stops, truck loading zones, or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.

(G) Requirements. Sidewalk vendors conducting business on the sidewalks of the City of Fayetteville with a valid permit issued under this Chapter may transport and/or display approved goods upon the approved mobile device or pushcart, under or subject to the following conditions:

- (1) The operating area shall not exceed 40 square feet of sidewalk, which shall include the area of the mobile device, operator and trash receptacle. The Planning Division will provide a map of approved vendor locations.
- (2) The length of the mobile device or pushcart shall not exceed 6 feet and the width shall not exceed 3 feet.
- (3) The height of the mobile device or pushcart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 feet.
- (4) No permanent hardware shall be affixed to the sidewalk or adjacent buildings.
- (5) Mobile generators are prohibited.
- (6) No sidewalk vendor may conduct business on a sidewalk in any of the following places:
 - (a) Within 10 feet of the intersection of the sidewalk with any other sidewalk. Sidewalk intersections shall be kept clear for pedestrian safety.
 - (b) Within 10 feet of any handicapped parking space, or access ramp.
 - (c) Within 15 feet of a fire hydrant.
 - (d) Within 15 ft. of an entrance to a building.
- (7) Street vending facilities shall be removed from the public right-of-way when not in use. Sidewalk vendors are only allowed to operate between the hours of 5 a.m. and 3 a.m. All carts shall

be removed from the public right-of-way during non-operational hours.

- (8) Sidewalk vendors shall display in a prominent and visible manner the permit issued by the Planning Division.
- (9) The Fire Marshal shall inspect and approve any food and beverage pushcart to assure the conformance of all cooking or heating apparatus with the provisions of the City Fire Code.
- (10) Sidewalk vendors who sell food and beverage are required to be permitted, and receive approval, through the Arkansas Department of Health and Human Services for food related establishments. A copy of the permit issued by the State, and inspected and approved by the Washington County Health Department, shall be supplied to the Planning Division prior to Planning Division approval.
- (11) All sidewalk vendors must pick up and properly dispose of all paper, cardboard, metal, plastic or other litter in any form (including cigarette butts) within the sidewalk area assigned to the vendor within thirty minutes of the end of daily operations. Failure to completely remove all such litter from the authorized sidewalk location shall constitute a violation of the permit approval.
- (12) No sidewalk vendor shall solicit, berate or make any noise of any kind by vocalization or otherwise, for the purpose of advertising or attracting attention to his wares. No audible amplified music shall be permitted.
- (H) Signage. Sidewalk vendors shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors are permitted a total of one (1) A-frame sandwich/menu board subject to Ch. 174 Signs regulating these type of signs. The menu board shall list the products and prices for the items being vended. Only products or services available at the vending location shall be displayed.
- (I) Revocation of the Sidewalk Vendor Permit. The Zoning and Development Administrator is authorized to revoke a sidewalk vendor's permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

(Ord. 5185, 10-7-08)

178.04 Outdoor Mobile Vendors Located On Private Property

- (A) Purpose. To permit outdoor mobile vendors, also known as transient merchants, to operate on private property while preserving and protecting the health, safety and welfare of citizens.
- (B) Requirements. Transient merchants located on private property shall meet the following requirements and submittals prior to approval:
 - (1) Permit Application. Each application for a permit to conduct a transient merchant business shall be accompanied by a \$50 permit review and processing fee.
 - (2) Application for a permit to conduct a transient merchant business shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered. A change in product or service will require a new permit to be issued.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.
 - (g) Written authorization, signed by the property owner or legal representative of record, stating that the transient merchant business is permitted to operate on the subject property.

TITLE XV UNIFIED DEVELOPMENT CODE

(3) The permit issued shall not be transferable in any manner.

traveling from place to place in the state, offering for sale or selling goods, wares, merchandise, or services

(Ord. 5185, 10-7-08)

(4) The permit is valid for one mobile vendor location only.

(5) The proposed use shall be a permitted use-by-right within the underlying zoning district in order to be permitted.

178.06-178.99 Reserved

(Ord. 5185, 10-7-08)

(6) A Temporary Certificate of Zoning Compliance (90 days) shall be approved by the Planning Division.

(7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location after this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved by the Planning Division for a new location.

(8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an outdoor mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.

(Ord. 5185, 10-7-08)

178.05 Transient Merchants

All transient merchants are subject to regulations and registration under Arkansas state statutes. Any criteria established herein shall not relieve the applicant from meeting applicable criteria relative to transient merchants. "Transient merchant" means any person, firm, corporation, partnership, or other entity that engages in, does, or transacts any temporary or transient business in the state, either in one (1) locality or in

Agenda Session 5/11/10

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting May 18, 2010

A meeting of the Fayetteville City Council will be held on May 18, 2010 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

Agenda Session Presentations:

- ✓ 1. OMI Wastewater Operations Annual Report - Billy Ammons, OMI Regional Business Manager
- ✓ 2. Fayetteville Chamber of Commerce - Economic Development Contract Quarterly Report

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

- ✓ 1. Approval of the May 4, 2010 City Council meeting minutes.

2. **2010 Community Development Block Grant (CDBG):** A resolution amending the 2010 city budget by approving a budget adjustment to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.
3. **Animal Services Donation:** A resolution amending the 2010 city budget by approving a budget adjustment to recognize animal services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.
4. **Arkansas Recreational Trails Program Grant:** A resolution expressing the willingness of the City of Fayetteville, Arkansas to utilize Federal-Aid Recreational Funds.
5. **2010 Bulletproof Vest Partnership Grant:** A resolution authorizing the Mayor to apply for a 2010 Bulletproof Vest Partnership fifty percent matching grant through the U.S. Department of Justice in the amount of \$18,200.00 for the replacement of twenty-five body armor vests for the Fayetteville Police Department.
6. **Justice Assistance Grant (JAG):** A resolution authorizing application for a 2010-2011 Justice Assistance Grant (JAG) for federal and state funding in the amount of \$167,586.00 and \$33,517.00 respectively, for the primary funding source of the 4th Judicial District Drug Task Force.
7. **2010 Federal Emergency Management Agency Assistance Grant:** A resolution authorizing application for a 2010 Federal Emergency Management Agency Assistance to firefighters grant in the amount of \$360,000.00 to purchase a specialized fire apparatus for the Fayetteville Fire Department.
8. **Arkansas Power Electronics International (APEI):** A resolution certifying local government endorsement of business to participate in the tax back program{The Consolidated Incentive Act of 2003, Ark. Code Ann. §15-4-2706(D)}
9. **Kearney National/Cooper Power:** A resolution authorizing purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approving a contract for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field from Kearney-National, Inc. through an assignment from Cooper Power Systems, LLC, in the amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.
- Remove 10. **McClelland Consulting Engineers Task Order #2:** A resolution approving task order #2 with McClelland Consulting Engineers, Inc. in the amount of \$12,300.00 for development and bidding of the Airport Security Improvements Project at Fayetteville Executive Airport-Drake Field and approving a budget adjustment.

B. Unfinished Business:

1. ✓ **Amend Chapter 72 (Nonconsensual Towing):** An ordinance to amend Chapter 72 Parking Regulations of the Fayetteville Code to enact regulations for nonconsensual towing of vehicles within the Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

2. ✓ **Amend Chapter 72 (§72.18 Residential Parking Permit):** An ordinance to amend Chapter 72 Parking Regulations by enacting §72.18 Residential Parking Permit Program for Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

3. ✓ **Amend Chapter 72 (Electronic Payment Station Program):** An ordinance to amend Article III Parking Meters of Chapter 72 Parking Regulations by changing its name and adding provisions for an electronic payment station program for paid parking lots and paid on-street parking and for other reasons. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

4. ✓ **Amend Chapter 72 (§72.99 Penalties):** An ordinance to amend Article III Parking Meters and Electronic Payment Stations of Chapter 72 Parking Regulations by amending §72.99 Penalties. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

Left on the First Reading

5. ✓ **Parking Program Personnel:** A resolution approving a budget adjustment in the amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone and approving the addition of 2.5 full-time equivalent positions in the Parking Management Division for the 2010 budget. *This resolution was tabled at the May 4, 2010 City Council meeting to the June 1, 2010 City Council meeting.*

C. New Business:

- ✓ **Amend §72.02 Impoundment Procedures:** An ordinance to amend §72.02 Impoundment Procedures of the Code of Fayetteville to clarify when the Police may initiate a nonconsensual tow of a vehicle.
- ✓ **§94.09 Sale of Fireworks:** An ordinance to amend Article I General Provisions of Chapter 94 Fire Prevention of the Fayetteville City Code by repealing §94.05 Sale and Use of Fireworks and enacting a new §94.09 Sale of Fireworks.
- ✓ **Amend Chapter §163.14 Revocation or Change of Conditional Use:** An ordinance amending §163.14 of the Unified Development Code to permit a periodic review of conditional use permits as described herein.

- ✓ 4. **Amend Chapter 178 Outdoor Vendors:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 178: Outdoor Vendors to allow for the sale of locally produced arts and crafts by outdoor vendors on public sidewalks and to permit consideration of larger vending carts for specific locations as a conditional use permit by the Planning Commission.

NB #5
Add: **National Bike to Work Week**
Announcements:

1. **City Council Tour: May 17, 2010**

Adjournment:

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Pre Agenda Meeting 5/5/10

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



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- ~~Remove
Don't know
if will not get back~~ 3. ~~**§94.10 Use of Fireworks:** An ordinance to amend Article I General Provisions of Chapter 94 Fire Prevention of the Fayetteville City Code by repealing §94.05 Sale and Use of Fireworks and enacting a new §94.10 Use of Fireworks.~~

- ~~Need new
packet
from Jeremy~~ 4. **Amend Chapter §163.14 Revocation or Change of Conditional Use:** An ordinance to amend §163.14 Revocation or Change of Conditional Use of the Unified Development Code of Fayetteville to enact a new subsection (E) Periodic Reviews.

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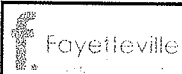
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ECONOMIC DEVELOPMENT SECOND QUARTER REPORT

May 11, 2010

Fayetteville Chamber of Commerce



Overview

Economic Development Website

Support Services for Existing Businesses

Prospective Company Recruitment

Strengthened Relationship with AEDC and Regional
Economic Development Organizations

Market Statistics and Demographics

Economic/Business Development Activities

Overview

Website

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Company
Recruitment

Strengthened
Relationships

Market
Statistics

Economic
Development
Activities

 Fayetteville

Economic Development Website

Performance Measure A

Active website, updated content, and easy-to-find content as provided by other cities

- Created and launched the Economic Development section within the Fayetteville Chamber website.
- www.fayettevillear.com/EconomicDevelopment/Economic_Development.aspx
- Worked on linking the Economic Development web pages to other relevant websites such as the city's website.
- Continued research and updating information on the Economic Development web pages.

Overview

Website

Support Services

Company Recruitment

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Market Statistics

Economic Development Activities

 Fayetteville

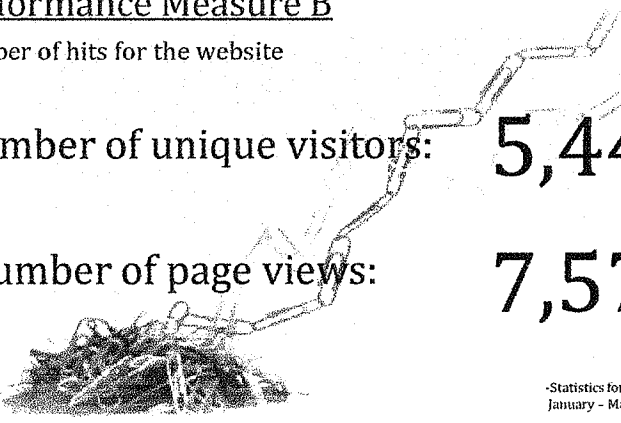
Economic Development Website

Performance Measure B

Number of hits for the website

Number of unique visitors: 5,449

Number of page views: 7,578



Statistics for fayettevillear.com
January - March 2010

Overview

Website

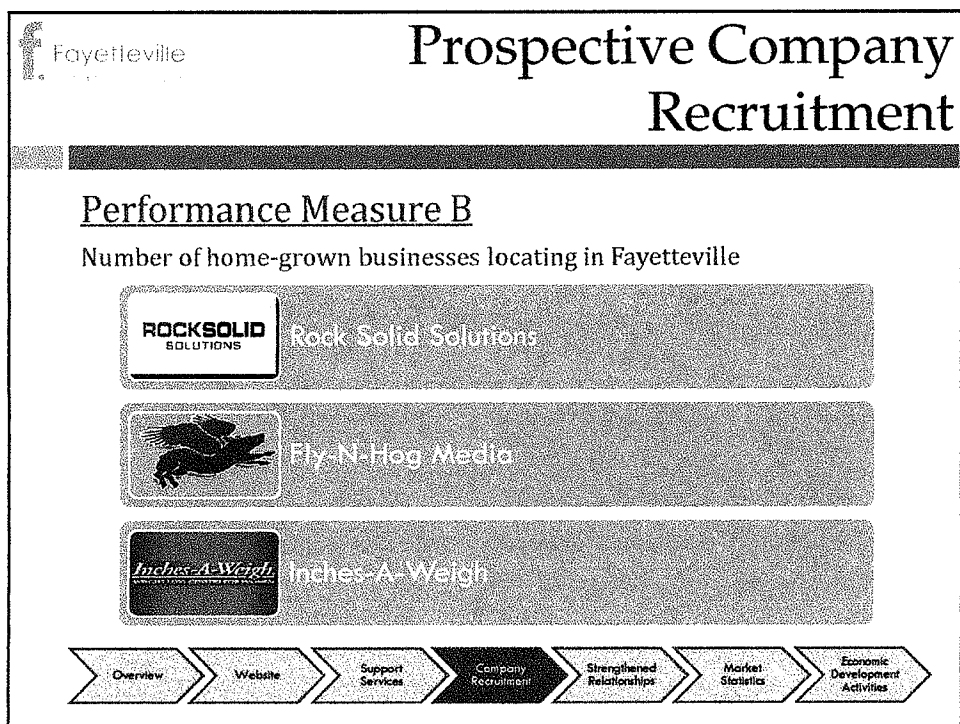
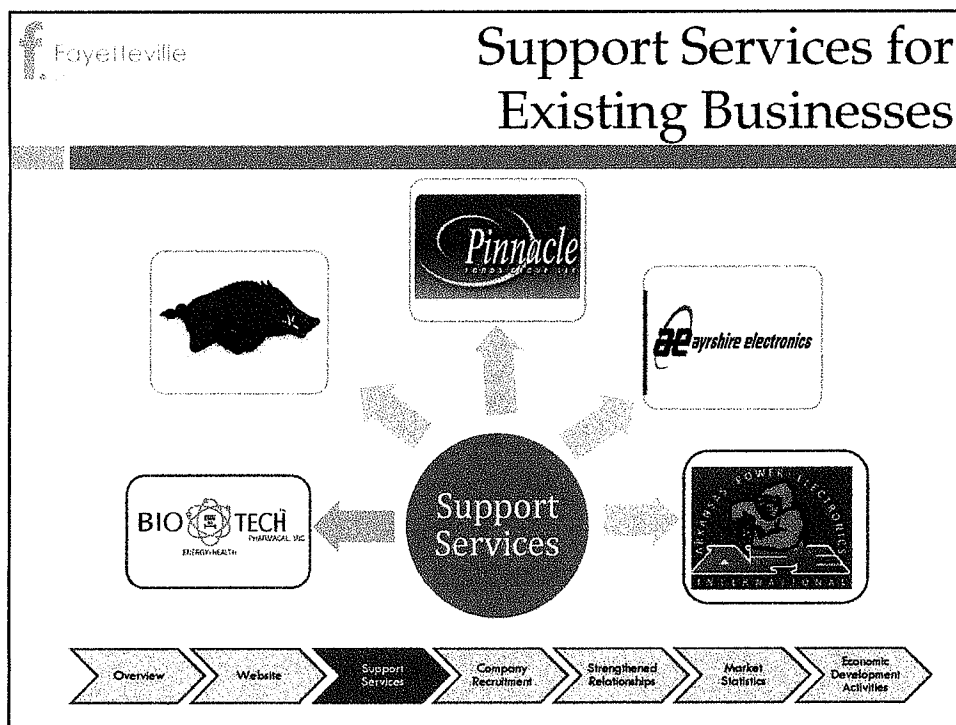
Support Services

Company Recruitment

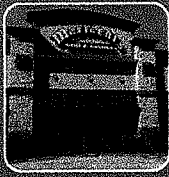
Strengthened Relationships

Market Statistics

Economic Development Activities

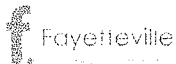


Prospective Company Recruitment


Mariachi Grill & Cantina


Mezza Luna Italian Eatery

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Company Recruitment
Strengthened Relationships
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Economic Development Activities



Prospective Company Recruitment

Performance Measure C

Number of new businesses in Fayetteville


Fly-N-Hog Media


Rock Solid Solutions

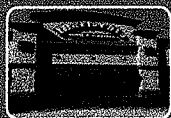

Inches-A-Way

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 Fayetteville

Prospective Company Recruitment

The Tan Company

Mariachis Grill & Cantina

Mezza Luna Italian Eatery

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 Fayetteville

Prospective Company Recruitment

Performance Measure D
Employee headcount attributed to new businesses



[Overview](#) [Website](#) [Support Services](#) [Company Recruitment](#) [Strengthened Relationships](#) [Market Statistics](#) [Economic Development Activities](#)



Prospective Company Recruitment

Performance Measure F

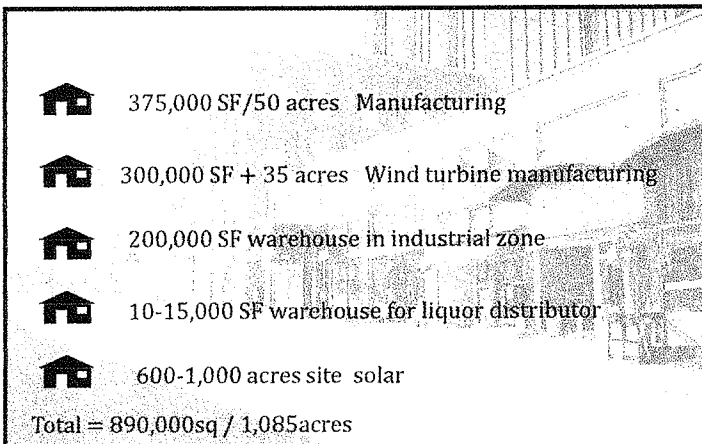
Listing of contacts or potential businesses obtained through serving as the lead contact

- a) Worked on 5 inquiries for buildings and sites.
- b) Assisted 6 perspective businesses (4 restaurants and 2 retail stores) that are considering of coming to Fayetteville.
- c) Working with a start-up company to establish a manufacturing facility in Fayetteville.
- d) Met with investor group for a site on Dickson St.
- e) Provided information to 17 inquiries from people interested to relocate to Fayetteville to live, work, or to start a business.
- f) Assisted with perspective investor interested to buy property.

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Prospective Company Recruitment





375,000 SF/50 acres Manufacturing



300,000 SF + 35 acres Wind turbine manufacturing



200,000 SF warehouse in industrial zone



10-15,000 SF warehouse for liquor distributor



600-1,000 acres site solar

Total = 890,000sq / 1,085 acres

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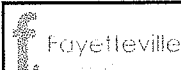


Strengthened Relationships

- Focused on building and maintaining relationships with the AEDC and Regional Economic Development Organizations

Performance Measure A

Regular meetings with the AEDC staff and commissioners, Green Valley Corporation staff, ARTP staff and other relevant organizations



Strengthened Relationships

Had regular meetings or contacts with the following organizations:

- | | |
|---|--|
| 1. Arkansas Economic Development Commission | 12. Green Valley Development |
| 2. UA Technology Development Foundation | 13. Innovate Arkansas |
| 3. SCORE | 14. University of Arkansas |
| 4. Arkansas Workforce Center, Fayetteville | 15. Fort Smith Regional Chamber |
| 5. Northwest Arkansas Community College | 16. Clarksville-Johnson County Chamber |
| 6. UA College of Engineering | 17. Institute for Economic Advancement-UALR |
| 7. City of Fayetteville Staff | 18. Ozark Area Chamber |
| 8. Adult & Community Education Center | 19. Independence County Economic Development, Batesville |
| 9. UA Applied Sustainability Center | 20. Economic Development Administration |
| 10. Bentonville-Bella Vista Chamber | 21. Mississippi County, Blytheville |
| 11. Fayetteville in Bloom | 22. City of Lowell |
| | 23. NOARK |
| | 24. AR Department of Workforce Services |



 Fayetteville

Strengthened Relationships

Performance Measure B

Documented efforts and participating in regional partnership

- Mayors and chamber presidents from Fayetteville, Rogers, Springdale, Lowell, and Bentonville made second trip to Washington DC in March, 2010 to meet with State representatives
- Attended Northwest Arkansas Council luncheon meetings
- Attended Northwest Arkansas Regional Chamber meetings
- Chambers currently working on a project to share access to Xcelligent, a real estate data based company



 Fayetteville

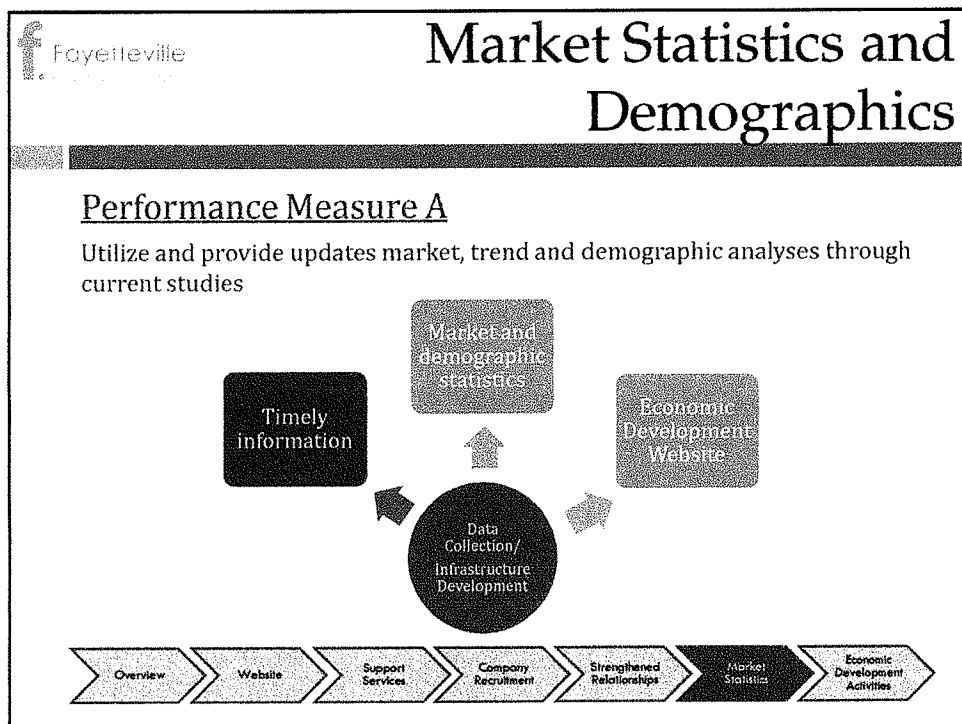
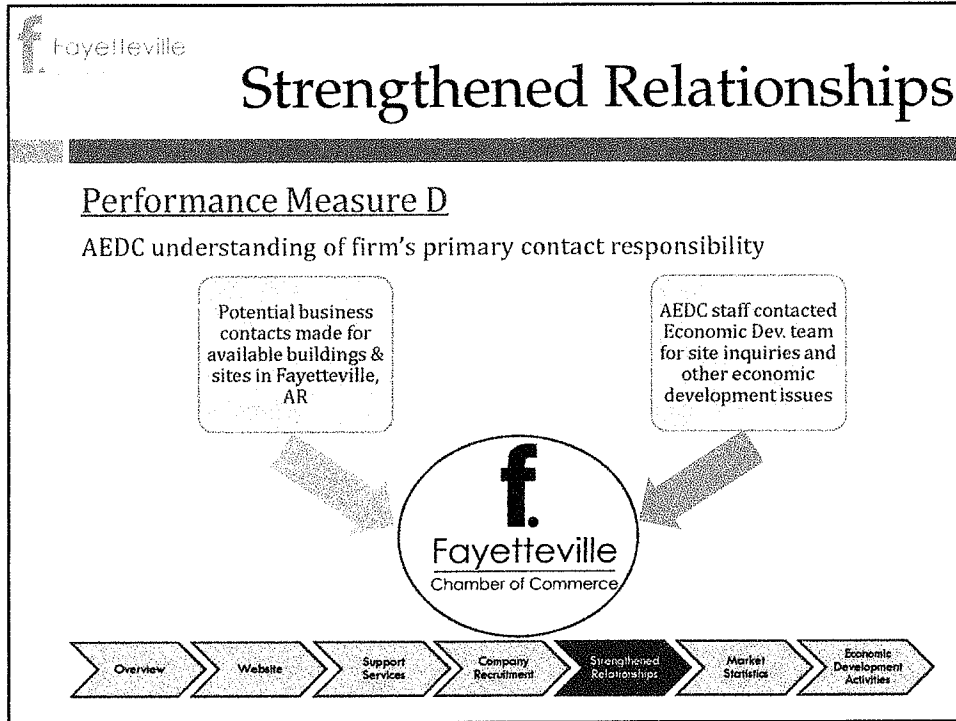
Strengthened Relationships

Performance Measure C

Positive relationship with AEDC and appropriate communicated vision for Fayetteville

- Worked with the Arkansas Economic Development Commissions' Building & Sites Coordinator on the state website
- Organized the Seminar on Site Selection Process for commercial and industrial real estate brokers and site developers to list available properties located in Fayetteville
- Working with AEDC's business development staff and the Assistant Executive Director of AEDC to assist local companies with their investment plans in the city





 Fayetteville

Economic/Business Development Activities

- Created Chief Exec & HR managers monthly workgroup that will identify potential problems and best business practices and to encourage workforce development
- Seminar on Site Selection Process for AEDC state website
- Spoke at Dislocated Workers Workshop
- Identifying potential applicants for the Clinton Climate Initiative – HEAL Arkansas program for local business
- Held a Project Management Seminar hosted by SBTDC and SCORE
- Attended FFEAC Green Economy Meetings, FFEAC full committee meetings

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 Fayetteville

Economic/Business Development Activities

- Participated in the Regional Economic Development Strategic Plan for NWA Council
- Attended Economic Issues meeting to discuss Arkansas' Infrastructure
- Participated in Green Economy webinar on the role of southern Chambers in the Green Economy
- Possible partnership with new organization called the Northwest Arkansas Entrepreneurship Alliance to assist new businesses in their start-up processes
- Attended Business Forecast 2010 meeting for national forecast on economic development
- Organizing and attracting participants for the Fayetteville Job Fair for high school seniors and the public

Overview Website Support Services Company Recruitment Strengthened Relationships Market Statistics Economic Development Activities

 Fayetteville

Economic/Business Development Activities

- Working on the Career Readiness Certificate program to assure employers that employees who have this certificate have the needed skill set to perform the job
- Assisted AEDC with its laborshed study
- Met with Innovate Arkansas officers to understand the services they provide
- GreeNWay Initiative has 7 certified businesses, with a list of interested businesses approaching 50. The program has also attracted new Chamber membership
- Assisting UA with an economic impact study of the GreeNWay Initiative

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Thank you!