

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 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda City of Fayetteville Arkansas City Council Meeting May 3, 2011

A meeting of the Fayetteville City Council will be held on May 3, 2011 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

City Council Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

1. Certificate of Achievement for Excellence in Financial Reporting

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the April 19, 2011 City Council meeting minutes. **APPROVED**
2. **Bid #11-32 Nichols Erosion Control, Inc.:** A resolution awarding Bid #11-32 and authorizing a contract with Nichols Erosion Control, Inc. in the amount of \$31,430.00 for the purchase and installation of sod for two new soccer fields at the Lewis Soccer Complex.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 69-11

3. **Bid #11-22 Multi-Craft Contractors, Inc.:** A resolution awarding Bid #11-22 and authorizing a contract with Multi-Craft Contractors, Inc. in the amount not to exceed \$62,237.00 for HVAC and repair services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 70-11

4. **Bid #11-23 Schefers Roofing:** A resolution awarding Bid #11-23 and authorizing a contract with Schefers Roofing in the amount not to exceed \$60,554.40 for roofing repairs and upgrades related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 71-11

5. **Bid #11-25 Heckathorn Construction Company, Inc.:** A resolution awarding Bid #11-25 and authorizing a contract with Heckathorn Construction Company, Inc. in an amount not to exceed \$40,742.00 for window and door replacements related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 72-11

6. **Bid #11-33 Natural State Insulation:** A resolution awarding Bid #11-33 and authorizing a contract with Natural State Insulation in an amount not to exceed \$25,885.10 for attic seal and installation services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 73-11

7. **Bid #11-34 Rocky Grove Sun Company:** A resolution awarding Bid #11-34 and authorizing a contract with Rocky Grove Sun Company in an amount not to exceed \$170,150.00 for solar equipment and installation related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 74-11

8. **STAG Grant – Sanitary Sewer System Improvements:** A resolution authorizing acceptance of a State and Tribal Assistance Grant (STAG) in the amount of \$485,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements in the area of and including the Elkins Outfall Sewer Line, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 75-11

B. Unfinished Business:

1. **None**

C. New Business:

1. **RZN 11-3777 (2143 North Ruppel Road/Daugherty):** An ordinance rezoning that property described in rezoning petition RZN 11-3777, for approximately 4.86 acres, located at 2143 North Ruppel Road from RSF-1, Residential Single-Family, 1 unit per acre to R-O, Residential Office.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5404

2. **VAC 11-3785 (221 W. South St./Knight):** An ordinance approving VAC 11-3785 submitted by Kristen Knight for property located at 221 West South Street to vacate a portion of an un-constructed right-of-way, a total of 0.03 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5405

3. **Amend Ordinance No. 2990 and Ordinance No. 4278:** An ordinance to amend Ordinance No. 2990 of March 6, 1984 to acknowledge that some Fayetteville citizens and businesses are now within the Prairie Grove Telephone Company franchise area and to apply the same franchise fee to both telephone companies, to amend Ordinance No. 4278 of November 21, 2000 and to codify these combined ordinances.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5406

4. **Amend §72.58 Off-Street Parking Facilities; Rules and Rate (K):** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates (K) to explicitly prohibit a driver driving around or improperly through a gated parking lot exit.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5407

5. **Amend §72.58 Off-Street Parking Facilities; Rules and Rates:** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates of the Fayetteville code to add event parking for large Walton Arts Center Events.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5408

6. **Walton Arts Center Contract to Provide Educational and Entertainment Services for Fayetteville Citizens:** An ordinance to waive competitive bidding and award a contract for educational, entertainment and administrative services in 2011 to the Walton Arts Center Council, Inc. in the amount of \$250,000.00.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5409

7. **Walton Arts Center Contract Parking Service:** An ordinance to waive competitive bidding and award a contract for parking service in 2011 to the Walton Arts Center Council, Inc. in the amount of \$39,000.00.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5410

- 8. Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars.

THIS ITEM WAS LEFT ON THE FIRST READING.

City Council Tour: Monday, May 2, 2011 at 4:30 p.m. The Council will tour the Fayetteville Executive Airport-Drake Field

Announcements:

Adjournment: 8:50 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

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City Council Meeting:

May 3, 2011

Adjourn: 8:50 p.m.

Subject:	Roll				
9-0	Thiel	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Thiel				
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Mayor Jordan				

Subject:	Consent				
Motion To:		Approve			
Motion By:		Lewis			
Seconded:		Gray			
<u>Minutes</u> <u>Approved</u> passed 69-11 thru 75-11	Thiel	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Thiel				
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Mayor Jordan				

Subject:	RZN 11-3777 (2143 North Ruppel Road/Daugherty)				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Thiel		
Seconded:		Gray	Ferrell		
C. 1 New Business <u>Passed</u> 5404	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	VAC 11-3785 (221 W. South St./Knight)				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Ferrell	Ferrell		
Seconded:		Adams	Tennant		
C. 2 New Business <u>passed</u> 5405	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	Amend Ordinance No. 2990 and Ordinance No. 4278				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Thiel		
Seconded:		Gray	Tennant		
C. 3 New Business <u>passed</u> 5406	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	Amend §72.58 Off-Street Parking Facilities; Rules and Rate (K)				
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Thiel	Thiel		
Seconded:		Gray	Gray		
C. 4 New Business <u>passed</u> 5407	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject: Amend §72.58 Off-Street Parking Facilities; Rules and Rates					
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Gray	Thiel		
Seconded:		Thiel	Petty		
C. 5 New Business <u>Passed</u> 5408	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				
		8-0	8-0	8-0	

Subject: Walton Arts Center Contract to Provide Educational and Entertainment Services for Fayetteville Citizens					
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Petty	Tennant		
Seconded:		Lewis	Petty		
C. 6 New Business <u>Passed</u> 5409	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				
		8-0	8-0	8-0	

Subject:	Walton Arts Center Contract Parking Service				
Motion To:		<i>2nd Read</i>	<i>3rd Read</i>	<i>Pass</i>	
Motion By:		<i>Gray</i>	<i>Gray</i>		
Seconded:		<i>Adams</i>	<i>Petty</i>		
C. 7 New Business <i>Passed</i> <i>5410</i>	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment				
Motion To:					
Motion By:					
Seconded:					
C. 8 New Business <i>Left on the first Reading</i>	Thiel				
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Mayor Jordan				



TO: Mayor Jordan

Kit Williams
City Attorney

THRU: Sondra Smith, City Clerk

Jason B. Kelley

Assistant City Attorney

FROM: Kit Williams, City Attorney

DATE: May 4, 2011

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of May 3, 2011

1. **Bid #11-32 Nichols Erosion Control, Inc.:** A resolution awarding Bid #11-32 and authorizing a contract with Nichols Erosion Control, Inc. in the amount of amount of \$31,430.00 for the purchase and installation of sod for two new soccer fields at the Lewis Soccer Complex.
2. **Bid #11-22 Multi-Craft Contractors, Inc.:** A resolution awarding Bid #11-22 and authorizing a contract with Multi-Craft Contractors, Inc. in the amount not to exceed \$62,237.00 for HVAC and repair services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
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- 10. Amend §72.58 Off-Street Parking Facilities; Rules and Rates:** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates of the Fayetteville Code to add event parking for large Walton Arts Center Events.
- 11. Walton Arts Center Contract to Provide Educational and Entertainment Service for Fayetteville Citizens:** An ordinance to waive competitive bidding and award a contract for educational, entertainment and administrative services in 2011 to the Walton Arts Center Council, Inc. in the amount of \$250,000.00.
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THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

Reference Bid: 11-22, HVAC Installation & Repair Services

Contractor: Multi-Craft Contractors, Inc.

Term: 1 year with 4 automatic renewal options

This contract executed this 3rd day of May 2011, between the **City of Fayetteville, Arkansas**, and **Multi-Craft Contractors, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Multi-Craft Contractors, Inc.** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-22 as stated in **Multi-Craft Contractors, Inc.** bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-22.
2. The City of Fayetteville shall pay **Multi-Craft Contractors, Inc.** based on its bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Multi-Craft Contractors, Inc.** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. It is explicitly understood and agreed to by **Multi-Craft Contractors, Inc.** and the City of Fayetteville that the total amount of funding that the City of Fayetteville may use for this and four other similar contracts it is approving today is capped at \$220,000.00. **Therefore, the City of Fayetteville will probably not order the full amount of items and services shown on any of the five bids approved by the Fayetteville City Council.** The City will order any work to be done by **Multi-Craft Contractors, Inc.** by issuing a Purchase Order for such work or project which shall be the City's assurance that sufficient funds remain to pay for such work or project. **Multi-Craft Contractors, Inc.** shall not start work on any project unless and until it receives the City's Purchase Order for such work or project.
4. The Contract documents which comprise this contract between the City of Fayetteville and **Multi-Craft Contractors, Inc.** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-22 with the specifications and conditions typed thereon.
 - B. **Multi-Craft Contractors, Inc.** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Multi-Craft Contractors, Inc.** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Multi-Craft Contractors, Inc.**
6. **Multi-Craft Contractors, Inc.** shall not assign its duties under the terms of this agreement.
7. **Multi-Craft Contractors, Inc.** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. **Multi-Craft Contractors, Inc.** agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:
- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
 - b. **Waste Stream – Multi-Craft Contractors, Inc.** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. **Multi-Craft Contractors, Inc.** shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. **Multi-Craft Contractors, Inc.** shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
 - c. **Davis-Bacon Wage Rates - Multi-Craft Contractors, Inc.** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. **Multi-Craft Contractors, Inc.** shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.
9. **Multi-Craft Contractors, Inc.** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Multi-Craft Contractors, Inc.** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- | | |
|--|--|
| Workmen's Compensation | Statutory Amount |
| Comprehensive General & Automobile Insurance | |
| Bodily Injury Liability | \$500,000 for each person injured.
\$1,000,000 for each accident. |
| Property Damage Liability | \$1,000,000 aggregate. |
- The premiums for all insurance and the bond required herein shall be paid by **Multi-Craft Contractors, Inc.**
10. **Multi-Craft Contractors, Inc.** to furnish proof of licensure as required by all local and state agencies.

11. This contract may be terminated without penalty by the City of Fayetteville or **Multi-Craft Contractors, Inc.** with 10 days' written notice.
12. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

**MULTI-CRAFT
CONTRACTORS, INC**

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: Dennis Kelly

LIONELD JORDAN, Mayor

DENNIS KELLY, EXEC. V.P.
Printed Contractor Name & Title

ATTEST:

ATTEST:

Jan Y. H...
Company Secretary

Sondra Smith, City Clerk

P.O. Box 1760
Business Address

Date Signed: _____

SPRINGDALE AR 72765-1760
City, State & Zip Code

Date Signed: 4/25/2011



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

Reference Bid: 11-23, Roofing Repairs and Upgrades

Contractor: Schefers Roofing Company

Term: 1 year with 4 automatic renewal options

This contract executed this 3rd day of May, 2011, between the **City of Fayetteville, Arkansas**, and **Schefers Roofing Company**, In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Schefers Roofing Company** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-23 as stated in **Schefers Roofing Company** bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-23.
2. The City of Fayetteville shall pay **Schefers Roofing Company** based on its bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Schefers Roofing Company** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. It is explicitly understood and agreed to by **Schefers Roofing Company** and the City of Fayetteville that the total amount of funding that the City of Fayetteville may use for this and four other similar contracts it is approving today is capped at \$220,000.00. **Therefore, the City of Fayetteville will probably not order the full amount of items and services shown on any of the five bids approved by the Fayetteville City Council.** The City will order any work to be done by **Schefers Roofing Company** by issuing a Purchase Order for such work or project which shall be the City's assurance that sufficient funds remain to pay for such work or project. **Schefers Roofing Company** shall not start work on any project unless and until it receives the City's Purchase Order for such work or project.
4. The Contract documents which comprise this contract between the City of Fayetteville and **Schefers Roofing Company** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-23 with the specifications and conditions typed thereon.
 - B. **Schefers Roofing Company** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Schefers Roofing Company** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Schefers Roofing Company**.
6. **Schefers Roofing Company** shall not assign its duties under the terms of this agreement.
7. **Schefers Roofing Company** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. **Schefers Roofing Company** agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:
- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
 - b. **Waste Stream** – **Schefers Roofing Company** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. **Schefers Roofing Company** shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. **Schefers Roofing Company** shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
 - c. **Davis-Bacon Wage Rates** - **Schefers Roofing Company** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. **Schefers Roofing Company** shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.
9. **Schefers Roofing Company** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Schefers Roofing Company** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	
Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by **Schefers Roofing Company**.

10. **Schefers Roofing Company** to furnish proof of licensure as required by all local and state agencies.

11. This contract may be terminated without penalty by the City of Fayetteville or Schefers Roofing Company with 10 days' written notice.
12. **Freedom of Information Act:** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

SCHEFERS ROOFING COMPANY

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Lance J. Schefers

Lance J. Schefers President
Printed Contractor Name & Title

LIONELD JORDAN, Mayor

ATTEST:

ATTEST:

[Signature]
Company Secretary

Sondra Smith, City Clerk

13243 PUPPYCREEK RD #13
Business Address

Date Signed: _____

SPRINGDALE, AR. 72762
City, State & Zip Code

Date Signed: ~~5-28-2011~~ 4/28/11



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

REFERENCE BID: 11-25, Window & Door Replacements

Contractor: Heckathorn Construction Company, Inc.

Term: 1 year with 4 automatic renewal options

This contract executed this 3rd day of May, 2011, between the **City of Fayetteville, Arkansas**, and **Heckathorn Construction Company, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Heckathorn Construction Company, Inc. at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete only those items specifically ordered by the City of Fayetteville by Purchase Order which are within Bid 11-25 as stated in Heckathorn Construction Company, Inc.'s bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-25.
2. The City of Fayetteville shall pay Heckathorn Construction Company, Inc. based on its bid form in pricing as shown in the bid and attached to this contract for any items specifically ordered by the City's Purchase Order. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. Heckathorn Construction Company, Inc. agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. It is explicitly understood and agreed to by Heckathorn Construction Company, Inc. and the City of Fayetteville that the total amount of funding that the City of Fayetteville may use for this and four other similar contracts it is approving today is capped at \$220,000.00. **Therefore, the City of Fayetteville will probably not order the full amount of items and services shown on any of the five bids approved by the Fayetteville City Council.** The City will order any work to be done by Heckathorn Construction Company, Inc. by issuing a Purchase Order for such work or project which shall be the City's assurance that sufficient funds remain to pay for such work or project. **Heckathorn Construction Company shall not start work on any project unless and until it receives the City's Purchase Order for such work or project.**
4. The Contract documents which comprise this contract between the City of Fayetteville and Heckathorn Construction Company, Inc. consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-25 with the specifications and conditions typed thereon.
 - B. Heckathorn Construction Company, Inc. bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and Heckathorn Construction Company, Inc. and may be modified only by a duly executed written instrument signed by the City of Fayetteville and Heckathorn Construction Company, Inc.
6. Heckathorn Construction Company, Inc. shall not assign its duties under the terms of this agreement.
7. Heckathorn Construction Company, Inc. agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance

of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. Heckathorn Construction Company, Inc. agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:
 - a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
 - b. **Waste Stream** – Heckathorn Construction Company, Inc. assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. Heckathorn Construction Company, Inc. shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. Heckathorn Construction Company, Inc. shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
 - c. **Davis-Bacon Wage Rates** - Heckathorn Construction Company, Inc. agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. Heckathorn Construction Company, Inc. shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.
9. Heckathorn Construction Company, Inc. shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, Heckathorn Construction Company, Inc. shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

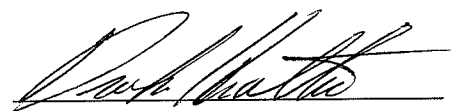
Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	
Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by Heckathorn Construction Company, Inc.

10. Heckathorn Construction Company, Inc. shall furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated without penalty by the City of Fayetteville or Heckathorn Construction Company, Inc. with 10 days' written notice.
12. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

**HECKATHORN.
CONSTRUCTION COMPANY, INC**

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: 

LIONELD JORDAN, Mayor

Don L. Heckathorn, President
Printed Contractor Name & Title

ATTEST:

ATTEST:


Company Secretary
Janet S. Heckathorn

Sondra Smith, City Clerk

1880 North Birch Avenue
Business Address

Date Signed: _____

Fayetteville, Arkansas 72703
City, State & Zip Code

Date Signed: 042511



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

REFERENCE BID: 11-33, Attic Seal and Insulation Re-Bid

Contractor: Natural State Insulation, LLC

Term: 1 year with 4 automatic renewal options

This contract executed this 3rd day of May, between the **City of Fayetteville, Arkansas**, and **Natural State Insulation, LLC**. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Natural State Insulation, LLC at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-33 as stated in Natural State Insulation, LLC's bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-33.
2. The City of Fayetteville shall pay Natural State Insulation, LLC based on its bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. Natural State Insulation, LLC agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. It is explicitly understood and agreed to by Natural State Insulation, LLC. and the City of Fayetteville that the total amount of funding that the City of Fayetteville may use for this and four other similar contracts it is approving today is capped at \$220,000.00. **Therefore, the City of Fayetteville will probably not order the full amount of items and services shown on any of the five bids approved by the Fayetteville City Council.** The City will order any work to be done by Natural State Insulation, LLC by issuing a Purchase Order for such work or project which shall be the City's assurance that sufficient funds remain to pay for such work or project. **Natural State Insulation, LLC shall not start work on any project unless and until it receives the City's Purchase Order for such work or project.**
4. The Contract documents which comprise this contract between the City of Fayetteville and Natural State Insulation, LLC consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-33 with the specifications and conditions typed thereon.
 - B. Natural State Insulation, LLC bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and Natural State Insulation, LLC and may be modified only by a duly executed written instrument signed by the City of Fayetteville and Natural State Insulation, LLC.
6. Natural State Insulation, LLC shall not assign its duties under the terms of this agreement.
7. Natural State Insulation, LLC agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. Natural State Insulation, LLC agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:
- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
 - b. **Waste Stream** – Natural State Insulation, LLC assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. Natural State Insulation, LLC shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. Natural State Insulation, LLC shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
 - c. **Davis-Bacon Wage Rates** - Natural State Insulation, LLC agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. Natural State Insulation, LLC shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.
9. Natural State Insulation, LLC shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, Natural State Insulation, LLC shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	
Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by Natural State Insulation, LLC.

10. Natural State Insulation, LLC to furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated without penalty by the City of Fayetteville or Natural State Insulation, LLC with 10 days' written notice.
12. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

NATURAL STATE INSULATION, LLC

CITY OF FAYETTEVILLE, ARKANSAS

By:



C.C. SHAGER II, GENERAL MANAGER
Printed Contractor Name & Title

LIONELD JORDAN, Mayor

ATTEST:

ATTEST:



Company Secretary CEO

Sondra Smith, City Clerk

1200 STEWART PLACE
Business Address

Date Signed: _____

SPRINGDALE AR 72764
City, State & Zip Code

Date Signed: 4/21/11

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: NATURAL STATE INSULATION, L.L.C.
Purchase Order and /Payments shall be issued to this name

*BUSINESS ADDRESS: 1200 STEWART PLACE

*CITY: SPRINGDALE *STATE: AR *ZIP: 72764

*PHONE: 479-966-4600 FAX: 479-966-4601

*E-MAIL: cshafer@biobased.net

*BY: (PRINTED NAME) CAMERON C. SHAFER II

*AUTHORIZED SIGNATURE: 

*TITLE: GENERAL MANAGER

*DATE: 04 / 15 / 2011

City of Fayetteville
 Bid 11-33, Attic Seal & Insulation Services Re-Bid
 Bid Pricing Form

BID 11-33, BID FORM					
SECTION A: Materials Subject to Buy American Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	% x	\$1,500	=	\$ —
2	General Material (Cost plus %) \$101-\$500	% x	\$1,500	=	\$ —
3	General Material (Cost plus %) \$501-\$1000	% x	\$1,500	=	\$ —
4	General Material (Cost plus %) \$1001-and up	% x	\$1,500	=	\$ —
5	Attic Seal Spray Foam Insulation	25 % x	\$15,000	= 3,750	18,750
6	Blown Insulation	% x	\$500	=	\$ —
Estimated Cost for Section A (Sum of Items 1-6):					\$
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B	C (A x B)	
Item	Description: Most basic trade is listed as "Rate 1". Skill set increases with increased rate number.	Estimated hours subject to change	Hourly Rate	Estimated Labor Cost	
7	Attic Seal & Insulation - Rate 1 (Installer)	130 x	\$ 23 ⁵⁰	=	\$ 3,055
8	Attic Seal & Insulation - Rate 2 (Installer/Foreman)	130 x	\$ 30 ⁰⁰	=	\$ 3,900
9	Attic Seal & Insulation - Rate 3 (Foreman/Inspector)	8 x	\$	=	\$ —
10	Attic Seal & Insulation - Rate 4 (Supervisor/Inspector)	3 x	\$ 60 ⁰⁰	=	\$ 180
Estimated Cost for Section B (Sum of Items 7-10):					7,135
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)					\$25,885
**Bid bond required on 5% of "Total Estimated Cost for Items 1-10". A 100% Performance and Payment bond is required for same within ten days after notice of contract award.					
Name of Contractor: <u>NATURAL STATE INSULATION, LLC</u>					

City of Fayetteville
Bid 11-33, Attic Seal & Insulation Services Re-Bid
Bid Proposal Form (shall be submitted with all bids)

This page becomes an integral part of the proposal submitted

by NATURAL STATE INSULATION, LLC.
(Vendor/Company Name)

The undersigned proposes to furnish and deliver, in accordance with the requirements of these bid documents issued February of 2011, prepared by the City of Fayetteville, Purchasing Division, **for the time period beginning date of Bid Award and ending twelve months thereafter as per Bid 11-33, subject to four one (1) year annual renewals.** Item numbers below refer to the same numbered paragraph of the Instructions to Bidders and the Specifications.

INSTRUCTIONS TO BIDDERS:

1.1. Prices shall include all labor, supervision, materials, equipment, transportation and services necessary to do a top quality job. YES X NO

1.2. Discounts offered:

1.3. Condition of Bid FIRM? YES X NO
SUBJECT TO ESCALATION
Method of Escalation, if applicable
BIDS MUST BE FIRM FOR ACCEPTANCE FOR 90 Days
Bid is Firm 90 Days Weeks

1.4. Bidder will accept total bid only? YES X NO
(or any portion of bid award) YES NO

1.5. Bidder has submitted an original bid document? YES X NO

1.6. Bidder will provide Workman's Compensation Insurance as outlined? YES X NO

1.7. Bidder will provide General Liability Insurance as outlined? YES X NO

1.8. Bidder will provide Automobile Coverage as outlined? YES X NO

1.9. Bidder will indemnify the City of Fayetteville? YES X NO

2.0. Bidder has included qualification & experience information as required? YES X NO

3.0 PURCHASES BY OTHER PUBLIC AGENCIES:

Bidder agrees to extend pricing, terms, and conditions to other public agencies

YES X NO

4.0 RESPONSE TIME

Bidder agrees to have a person on call for emergencies twenty four hours a day?

YES X NO

Bidder agrees to two to three day response time for regular calls unless an extension is approved by City project manager?

YES X NO

5.0 DAVIS-BACON PREVAILING WAGE DETERMINATION

Bidder agrees meet all wage requirements as outlined and required, including but not limited to certified payroll reporting?

YES X NO

6.0 BUY AMERICAN

Bidder agrees follow all Buy American requirements?

YES X NO

7.0 PROFESSIONAL STANDARDS

Bidder agrees to have professional workmanship and perform work in a manner consistent with the industry in which it is related to?

YES X NO

BIDDER ACKNOWLEDGES RECEIPT OF ADDENDA:

ADDENDUM NO. N/A DATED

ADDENDUM NO. N/A DATED

ADDENDUM NO. N/A DATED

This page becomes an integral part of the proposal submitted

by NATURAL STATE INSULATION, LLC
(Vendor/Company Name)

We propose to furnish the equipment/material as indicated in this Bid Blank, provided to the City of Fayetteville with transportation charges prepaid, and for the price quoted below. All equipment/material to be furnished in accordance with City of Fayetteville specifications attached hereto.

City of Fayetteville
Bid 11-33, Attic Seal & Insulation Services Re-Bid
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: NATURAL STATE INSULATION, LLC

BUSINESS ADDRESS: 1200 STEWART PLACE, SPRINGDALE, AR 72764

NUMBER OF YEARS IN BUSINESS: 7 HOW LONG IN PRESENT LOCATION: 4 mos. / 7 yrs in NWA

TOTAL NUMBER OF CURRENT EMPLOYEES: 7 FULL TIME N/A PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 5 FULL TIME N/A PART TIME

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be completed):

1. BENCHMARK CONSTRUCTION OF NWA
COMPANY NAME

FAYETTEVILLE, AR 72703
CITY, STATE, ZIP

STEVE SMITH
CONTACT PERSON

479-871-2082
TELEPHONE

479-251-1319
FAX NUMBER

benchmarkconst@att.net
E-MAIL ADDRESS

2. C. R. CRAWFORD CONSTRUCTION
COMPANY NAME

FAYETTEVILLE, AR 72764
CITY, STATE, ZIP

CODY CRAWFORD
CONTACT PERSON

479-251-1161
TELEPHONE

479-571-1161
FAX NUMBER

cody@cc Crawford, com
E-MAIL ADDRESS

3. EAST - HARDING, INC
COMPANY NAME

LITTLE ROCK, AR 72225
CITY, STATE, ZIP

KEVIN LANGSTON
CONTACT PERSON

479-387-2885
TELEPHONE

501-661-9546
FAX NUMBER

klangston@eastharding.com
E-MAIL ADDRESS

4. MILESTONE CONSTRUCTION COMPANY
COMPANY NAME

SPRINGDALE, AR 72762
CITY, STATE, ZIP

GREG FERUS
CONTACT PERSON

479-751-3560
TELEPHONE

479-751-4841
FAX NUMBER

gferus@milestonecc.com
E-MAIL ADDRESS

City of Fayetteville
Bid 11-33, Attic Seal & Insulation Services Re-Bid
Debarment Certification Form – **THIS FORM SHOULD BE SUBMITTED WITH ALL BIDS**

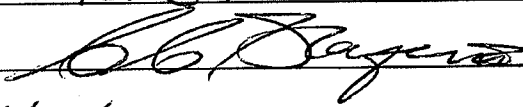
As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: CAMERON C. SHAFER II
COMPANY: NATURAL STATE INSULATION, LLC
PHYSICAL ADDRESS: 1200 STEWART PLACE, SPRINGDALE, AR 72764
MAILING ADDRESS: SAME
PHONE: 479-966-4600 FAX: 479-966-4601
EMAIL: cshafer@biobased.net
SIGNATURE: 
DATE: 4/15/11

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.

City of Fayetteville
Bid 11-33, Attic Seal & Insulation Services Re-Bid
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

 X 1.) NO KNOWN RELATIONSHIP EXISTS

 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

ROBERT PORTER
Printed Name

Robert Porter
Signature

4-18-11
Date

GRANITE RE, INC.

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we
Natural State Insulation Commercial Contracting LLC
as principal, hereinafter called the Principal, and

Granite Re, Inc., 14001 Quailbrook Drive, Oklahoma City, OK 73134

a corporation duly organized under the laws of the State of Oklahoma as Surety, hereinafter called the Surety, are
held and firmly bound unto

City of Fayetteville

as Oblige, hereinafter called the Oblige, in the sum of

*** Five----- Percent of the Bid Amount****, Dollars (\$*** 5 %****)

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for

Project: Bid #1133 Insulation of 4 Non Profits, Fayetteville, AR

Bid Date: 4-18-11

NOW THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal shall enter into a Contract with the Oblige in
accordance with terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and
sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution
thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the
Oblige the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the
Oblige may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void,
otherwise to remain in full force and effect.

Signed and sealed this 18th day of April, 2011

Diana Bratcher
Witness

Natural State Insulation Commercial Contracting LLC

Principal

[Signature]

GENERAL MANAGER

Title

(Seal)

Granite Re, Inc.

Billy Eugene Bennett Jr.
Billy Eugene Bennett Jr. Attorney in Fact (Seal)

GRANITE RE, INC. GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of OKLAHOMA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

PAT A. GIRARD; BILLY EUGENE BENNETT JR.; ADRIAN W. LUTTRELL; DANNY LEE SCHNEIDER; MICHAEL ADRIAN LUTTRELL; JACQUE L. LINDSEY its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

PAT A. GIRARD; BILLY EUGENE BENNETT JR.; ADRIAN W. LUTTRELL; DANNY LEE SCHNEIDER; MICHAEL ADRIAN LUTTRELL; JACQUE L. LINDSEY may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Secretary/Treasurer, this 26th day of June, 2007.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)



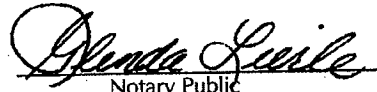

Kenneth D. Whittington, President


Rodman A. Frates, Secretary/Treasurer

On this 26th day of June, 2007, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Rodman A. Frates, Secretary/Treasurer of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Rodman A. Frates were respectively the President and the Secretary/Treasurer of the GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Secretary/Treasurer, respectively, of the Company.

My Commission Expires:
May 9, 2012
Commission #: 00005708




Notary Public

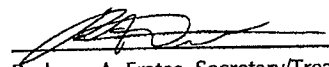
GRANITE RE, INC. Certificate

THE UNDERSIGNED, being the duly elected and acting Secretary/Treasurer of Granite Re, Inc., an Oklahoma Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

"RESOLVED, that the President, any Vice President, the Secretary, and any Assistant Vice President shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this
18th day of April, 20 11.




Rodman A. Frates, Secretary/Treasurer



BID: 11-33
 DATE: 04/18/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 11-33, Attic Seal & Insulation Services Re-Bid

Name of Contractor:		Natural State Insulation, LLC			
SECTION A: Materials Subject to Buy American Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100		x \$1,500	=	No Bid
2	General Material (Cost plus %) \$101-\$500		x \$1,500	=	No Bid
3	General Material (Cost plus %) \$501-\$1000		x \$1,500	=	No Bid
4	General Material (Cost plus %) \$1001-up		x \$1,500	=	No Bid
5	Attic Seal Spray Foam Insulation	25%	x \$15,000	= \$3,750	\$18,750.00
6	Blown Insulation		x \$500	=	No Bid
Estimated Cost for Section A (Sum of Items 1-6):					\$18,750.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B	C (A x B)	
Item	Description	Estimated hours	Hourly Rate		Estimated Labor Cost
7	Attic Seal & Insulation - Rate 1 (Installer)	130	x \$23.50	=	\$3,055.00
8	Attic Seal & Insulation - Rate 2 (Installer/Foreman)	130	x \$30.00	=	\$3,900.00
9	Attic Seal & Insulation - Rate 3 (Foreman/Inspector)	8	x	=	No Bid
10	Attic Seal & Insulation - Rate 4 (Supervisor/Inspector)	3	x \$60.00	=	\$180.00
Estimated Cost for Section B (Sum of Items 7-10):					\$7,135.00
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)					\$25,885.00

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

CERTIFIED: P. Vice
 P. VICE, PURCH MGR

A. Foreman
 WITNESS

4/20/11
 DATE

CONTRACT

Reference Bid: 11-34, Installation of Solar Equipment Re-Bid

Contractor: Rocky Grove Sun Company

Term: 1 year with 4 automatic renewal options

This contract executed this 3rd day May, 2011, between the **City of Fayetteville, Arkansas**, and **Rocky Grove Sun Company**. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Rocky Grove Sun Company** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-34 as stated in **Rocky Grove Sun Company's** bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-34.
2. The City of Fayetteville shall pay **Rocky Grove Sun Company** based on its bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Rocky Grove Sun Company** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. It is explicitly understood and agreed to by **Rocky Grove Sun Company** and the City of Fayetteville that the total amount of funding that the City of Fayetteville may use for this and four other similar contracts it is approving today is capped at \$220,000.00. **Therefore, the City of Fayetteville will probably not order the full amount of items and services shown on any of the five bids approved by the Fayetteville City Council.** The City will order any work to be done by **Rocky Grove Sun Company** by issuing a Purchase Order for such work or project which shall be the City's assurance that sufficient funds remain to pay for such work or project. **Rocky Grove Sun Company shall not start work on any project unless and until it receives the City's Purchase Order for such work or project.**
4. The Contract documents which comprise this contract between the City of Fayetteville and **Rocky Grove Sun Company** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-34 with the specifications and conditions typed thereon.
 - B. **Rocky Grove Sun Company** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Rocky Grove Sun Company** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Rocky Grove Sun Company**.
6. **Rocky Grove Sun Company** shall not assign its duties under the terms of this agreement.
7. **Rocky Grove Sun Company** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. **Rocky Grove Sun Company** agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:

- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
- b. **Waste Stream** – **Rocky Grove Sun Company** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. Rocky Grove Sun Company shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. Rocky Grove Sun Company shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
- c. **Davis-Bacon Wage Rates** - **Rocky Grove Sun Company** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. Rocky Grove Sun Company shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.

9. **Rocky Grove Sun Company** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Rocky Grove Sun Company** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	
Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by **Rocky Grove Sun Company**.

10. **Rocky Grove Sun Company** to furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated without penalty by the City of Fayetteville or **Rocky Grove Sun Company** with 10 days' written notice.
12. **Freedom of Information Act:** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

ROCKY GROVE SUN COMPANY

CITY OF FAYETTEVILLE, ARKANSAS

By: James D. Damet

James D. Damet OWNER
Printed Contractor Name & Title

ATTEST:

[Signature]
Company Secretary

LIONELD JORDAN, Mayor

ATTEST:

Sondra Smith, City Clerk

3299 MADISON 3605
Business Address

Date Signed: _____

KINGSTON, AR 72742
City, State & Zip Code

Date Signed: 4-25-11

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: ROCKY GROVE SUN COMPANY
Purchase Order and /Payments shall be issued to this name

*BUSINESS ADDRESS: 3299 MADISON 3605

*CITY: KINGSTON *STATE: AR *ZIP: 72742

*PHONE: 479-665-2457 FAX: 479-665-2471

*E-MAIL: info@rockygrove.com

*BY: (PRINTED NAME) JAMES D. DAMET

*AUTHORIZED SIGNATURE: James D. Damet

*TITLE: OWNER

*DATE: 4 1 17 2011

City of Fayetteville
 Bid 11-34, Installation of Solar Equipment Re-Bid
 Bid Pricing Form

BID 11-34, BID FORM					
SECTION A: Materials Subject to Davis-Bacon Wage Rates				C (A x B)	D (B x C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	4 %	\$250	= 10	\$ 260.
2	General Material (Cost plus %) \$101-\$500	4 %	\$750	= 30	\$ 780.
3	General Material (Cost plus %) \$501-\$1000	4 %	\$1,500	= 60	\$ 1560.
4	General Material (Cost plus %) \$1001-\$5000	20 %	\$5,500	= 1100.	\$ 6600.
5	Main Solar Panels	19 %	\$125,000	= 23,750	\$ 148,750.
Estimated Cost for Section A (Sum of Items 1-5):					\$157,950.
SECTION B: Labor Subject to Davis-Bacon Wage Rates			A	B	C (A x B)
Item	Description: Most basic trade is listed as "Rate 1". Skill set increases with increased rate number.	Estimated hours subject to change	Hourly Rate	Estimated Labor Cost	
6	Installation of Solar - Rate 1 (Fabricator/Installer)	150	\$ 20.	=	\$ 3000.
7	Installation of Solar- Rate 2 (Installer/Foreman)	150	\$ 25.	=	\$ 3750.
8	Installation of Solar - Rate 3 (Foreman/Inspector)	150	\$ 35.	=	\$ 5250.
9	Installation of Solar - Rate 4 (Supervisor/Inspector)	5	\$ 40.	=	\$ 200.
Estimated Cost for Section B (Sum of Items 6-9):					12,200
**Total Estimated Cost for Items 1-9 (Sum of Section A + Section B)					\$ 170,150.
**Bid bond required on 5% of "Total Estimated Cost for Items 1-10". A 100% Performance and Payment bond is required for same within ten days after notice of contract award.					
Name of Contractor: <u>ROCKY GROVE SUN. COMPANY</u>					

City of Fayetteville
Bid 11-34, Installation of Solar Equipment Re-Bid
Bid Proposal Form (shall be submitted with all bids)

This page becomes an integral part of the proposal submitted

by Rocky Grove Sun Company
(Vendor/Company Name)

The undersigned proposes to furnish and deliver, in accordance with the requirements of these bid documents issued February of 2011, prepared by the City of Fayetteville, Purchasing Division, **for the time period beginning date of Bid Award and ending twelve months thereafter as per Bid 11-34, subject to four one (1) year annual renewals.** Item numbers below refer to the same numbered paragraph of the Instructions to Bidders and the Specifications.

INSTRUCTIONS TO BIDDERS:

1.1. Prices shall include all labor, supervision, materials, equipment, transportation and services necessary to do a top quality job. YES ☒ NO ☐

1.2. Discounts offered:

1.3. Condition of Bid FIRM? YES ☒ NO ☐
SUBJECT TO ESCALATION
Method of Escalation, if applicable
BIDS MUST BE FIRM FOR ACCEPTANCE FOR 90 Days
Bid is Firm 90 Days ☐ Weeks ☐

1.4. Bidder will accept total bid only? YES ☒ NO ☐
(or any portion of bid award) YES ☒ NO ☐

1.5. Bidder has submitted an original bid document? YES ☒ NO ☐

1.6. Bidder will provide Workman's Compensation Insurance as outlined? YES ☒ NO ☐

1.7. Bidder will provide General Liability Insurance as outlined? YES ☒ NO ☐

1.8. Bidder will provide Automobile Coverage as outlined? YES ☒ NO ☐

1.9. Bidder will indemnify the City of Fayetteville? YES ☒ NO ☐

2.0. Bidder has included qualification & experience information as required? YES ☒ NO ☐

3.0 PURCHASES BY OTHER PUBLIC AGENCIES:

Bidder agrees to extend pricing, terms, and conditions to other public agencies

YES ☒ NO ☐

4.0 RESPONSE TIME

Bidder agrees to have a person on call for emergencies twenty four hours a day?

YES ☒ NO ☐

Bidder agrees to twenty four (24) hour emergency response time?

YES ☒ NO ☐

Bidder agrees to two to three day response time for regular calls unless an extension is approved by City project manager?

YES ☒ NO ☐

5.0 DAVIS-BACON PREVAILING WAGE DETERMINATION

Bidder agrees meet all wage requirements as outlined and required, including but not limited to certified payroll reporting?

YES ☒ NO ☐

6.0 BUY AMERICAN

Bidder agrees follow all Buy American requirements?

YES ☒ NO ☐

7.0 PROFESSIONAL STANDARDS

Bidder agrees to have professional workmanship and perform work in a manner consistent with the industry in which it is related to?

YES ☒ NO ☐

Bidder has proper NABCEP Certification?

YES ☒ NO ☐ *

If "NO" selected, will your NABCEP certification be fully approved before Friday, May 13, 2011 at 5:00 PM?

YES ☐ NO ☐

If not certified, has bidder submitted documentation with bid to insure certification before deadline?

YES ☐ NO ☐

BIDDER ACKNOWLEDGES RECEIPT OF ADDENDA:

ADDENDUM NO. 1 DATED 4-11-11

ADDENDUM NO. DATED

ADDENDUM NO. DATED

This page becomes an integral part of the proposal submitted

by Rocky Grove Sun Company
(Vendor/Company Name)

We propose to furnish the equipment/material as indicated in this Bid Blank, provided to the City of Fayetteville with transportation charges prepaid, and for the price quoted below. All equipment/material to be furnished in accordance with City of Fayetteville specifications attached hereto.

City of Fayetteville
Bid 11-34, Installation of Solar Equipment Re-Bid
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: Rocky GROVE SUN COMPANY

BUSINESS ADDRESS: 3299 MADISON 3605

NUMBER OF YEARS IN BUSINESS: 23 HOW LONG IN PRESENT LOCATION: 23

TOTAL NUMBER OF CURRENT EMPLOYEES: 3 FULL TIME 1 PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 3 FULL TIME 1 PART TIME

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be completed):

1. GRACE COMMUNITY CHURCH
COMPANY NAME

FT SMITH, AR 72908
CITY, STATE, ZIP

BILL LESLIE
CONTACT PERSON

479-646-1177
TELEPHONE

FAX NUMBER

mail@gracethechurch.com
E-MAIL ADDRESS

3. CITY OF FAYETTEVILLE
COMPANY NAME

FAYETTEVILLE, AR 72701
CITY, STATE, ZIP

John Coleman
CONTACT PERSON

479-575-8272
TELEPHONE

FAX NUMBER

jcoleman@ci.fayettevillear.us
E-MAIL ADDRESS

2. BOARDWALK CAFE
COMPANY NAME

JASPER, AR 72765
CITY, STATE, ZIP

JOSEPH MORGAN
CONTACT PERSON

870-446-5900
TELEPHONE

FAX NUMBER

anhouse@ritternet.com
E-MAIL ADDRESS

4. STITT ENERGY SYSTEMS
COMPANY NAME

ROGERS, AR 72756
CITY, STATE, ZIP

ORLO STITT
CONTACT PERSON

479-636-2572
TELEPHONE

479-636-8745
FAX NUMBER

info@stittenergy.com
E-MAIL ADDRESS

City of Fayetteville
Bid 11-34, Installation of Solar Equipment Re-Bid
Debarment Certification Form – **THIS FORM SHOULD BE SUBMITTED WITH ALL BIDS**

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: JAMES D. DAMEY
COMPANY: ROCKY GROVE SUN COMPANY
PHYSICAL ADDRESS: 3299 MADISON 3605
MAILING ADDRESS: SAME
PHONE: 479-665-2457 FAX: 479-665-2471
EMAIL: info@rockygrove.com
SIGNATURE: James D. Damey
DATE: 4-17-11

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.

City of Fayetteville
Bid 11-34, Installation of Solar Equipment Re-Bid
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

☒ 1.) NO KNOWN RELATIONSHIP EXISTS

☐ 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

JAMES D. DAMET
Printed Name

James D. Damet
Signature

4-17-11
Date



Western Surety Company

BID BOND
(Percentage)Bond Number: 71092749

KNOW ALL PERSONS BY THESE PRESENTS, That we James Damet dba Rocky Grove Sun Company of 3299 Madison 3605, Kingston, AR 72742, hereinafter referred to as the Principal, and Western Surety Company, as Surety, are held and firmly bound unto City of Fayetteville of 113 W. Mountain, Fayetteville, AR -72701, hereinafter referred to as the Oblige, in the sum of Five (5 %) percent of the greatest amount bid, for the payment of which we bind ourselves, our legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a proposal to Oblige on a contract for Solar Pv System Installation

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time as may be specified, enter into the contract in writing and give such bond or bonds as may be specified in the bidding or contract documents with surety acceptable to Oblige; or if Principal shall fail to do so, pay to Oblige the damages which Oblige may suffer by reason of such failure not exceeding the penalty of this bond, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED this 18th day of April, 2011.

James Damet dba Rocky Grove Sun Company

(Principal)

By

(Seal)

Western Surety Company

(Surety)

By

(Seal)

BRYAN SCOTT CLINKSCATES

Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 71092749

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint BRYAN SCOTT CLINKSCALES

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: James Damet dba Rocky Grove Sun Company

Obligee: City of Fayetteville

Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of July 18, 2011, but until such time shall be irrevocable and in full force and effect.

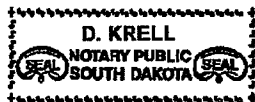
In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 18th day of April, 2011.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

On this 18th day of April, in the year 2011, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



My Commission Expires November 30, 2012

Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 18th day of April, 2011.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

ACKNOWLEDGMENT OF SURETY
(Attorney-in-Fact)

STATE OF Arkansas }
COUNTY OF Washington } ss

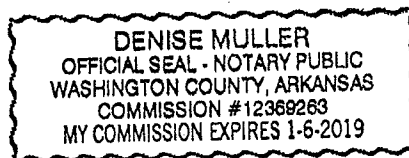
Bond No. 71092749

On this 18th day of April, 2011, before me, a notary public in
and for said County, personally appeared BRYAN SCOTT CLINKSCALES
to me personally known and being by me duly sworn, did say, that he is the Attorney-in-Fact of WESTERN SURETY COMPANY,
a corporation of Sioux Falls, South Dakota, created, organized and existing under and by virtue of the laws of the State of South
Dakota, that the said instrument was executed on behalf of the said corporation by authority of its Board of Directors and that
the said BRYAN SCOTT CLINKSCALES
acknowledges said instrument to be the free act and deed of said corporation and that he has authority to sign said instrument
without affixing the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____
Springdale, Arkansas, the day and year last above written.

My commission expires Jan. 6, 2019 Denise Muller Notary Public

Form 106-4-2000





www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

A. 7
Bid #11-34 Rocky
Grove Sun Company
Page 14 of 16

Bid 11-34, Addendum 1

Bid 11-34, Installation of Solar Equipment Re-Bid

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Monday, April 11, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

Bid 11-34, has the following additional requirement:

1. The individual encompassing the NABCEP Certification is required to be directly employed by the bidder and shall not be hired as a subcontractor. The NABCEP certified installer is required to be shown on the certified payroll information sent by the bidder with reporting.

Acknowledge Addendum #1:

Printed Name: JAMES D. DAMET

Signature: James D. Damet

Title: OWNER Date: 4-11-11

Company: Rocky Grove Sun Co.

Project Check List

Bid 11-34, Installation of Solar Equipment Re-Bid

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.

☒ 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)

- In lieu of a bid bond, the bidder may submit a cashier's check for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.

☒ All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).

☒ All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.

☒ All bidders shall submit the following forms with each bid: Bid Pricing Form, Bid Proposal Form, Vendor References, Debarment Certification Form, & Statement of Disclosure.

☒ All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents

☒ All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: Rocky Grove Sun Co.

ARKANSAS CONTRACTORS LICENSE NUMBER: #0211380511



BID: 11-34
DATE: 04/18/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

A. 7
Bid #11-34 Rocky
Grove Sun Company
Page 16 of 16

Bid 11-34, Installation of Solar Equipment Re-Bid

Name of Contractor:		Rocky Grove Sun Company			
SECTION A: Materials Subject to Buy American Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	4%	x \$250	= \$10	\$260.00
2	General Material (Cost plus %) \$101-\$500	4%	x \$750	= \$30	\$780.00
3	General Material (Cost plus %) \$501-\$1000	4%	x \$1,500	= \$60	\$1,560.00
4	General Material (Cost plus %) \$1001-\$5000	20%	x \$5,500	= \$1,100	\$6,600.00
5	Main Solar Panels	19%	x \$125,000	= \$23,750	\$148,750.00
Estimated Cost for Section A (Sum of Items 1-5):					\$157,950.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B		C (A x B)
Item	Description	Estimated hours	Hourly Rate		Estimated Labor Cost
6	Installation of Solar - Rate 1 (Fabricator/Installer)	150	x	\$20.00	= \$3,000.00
7	Installation of Solar- Rate 2 (Installer/Foreman)	150	x	\$25.00	= \$3,750.00
8	Installation of Solar - Rate 3 (Foreman/Inspector)	150	x	\$35.00	= \$5,250.00
9	Installation of Solar - Rate 4 (Supervisor/Inspector)	5	x	\$40.00	= \$200.00
Estimated Cost for Section B (Sum of Items 6-9):					\$12,200.00
**Total Estimated Cost for Items 1-9 (Sum of Section A + Section B)					\$170,150.00

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

P. Vice

A. Foran

4/20/11

Added at
Agenda Session
April 26, 2011
Consent Agenda

City of Fayetteville Staff Review Form

A. 8
STAG Grant – Sanitary Sewer
System Improvements
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Water/Wastewater
Division

Utilities
Department

Action Required:

Resolution to accept a State and Tribal Assistance Grant (STAG) Program grant for \$485,000 from the US Environmental Protection Agency for sanitary sewer system improvements, specifically replacing and upgrading the Elkins outfall sewer line, and other lines in the area, and approving a budget amendment acknowledging receipt of the grant funds.

\$ (485,000)
Cost of this request

\$ 1,680,000
Category / Project Budget

Swr Replace- Elkins Outfall Line
Program Category / Project Name

5400-0940-4309.00
Account Number

\$ -
Funds Used to Date

Sewer Impact Fee Improvements
Program / Project Category Name

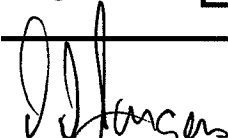
10010
Project Number

\$ 1,680,000
Remaining Balance

Water/Sewer
Fund Name

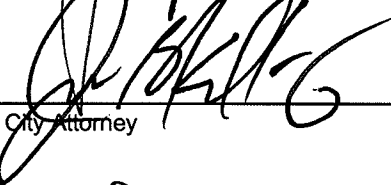
Budgeted Item ☒

Budget Adjustment Attached ☒


Department Director

20 April
Date

Previous Ordinance or Resolution # 74-10


City Attorney

4-21-11
Date

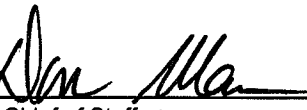
Original Contract Date: 4/20/2010

Original Contract Number: N/A

Paul a. Behn
Finance and Internal Services Director

4-21-2011
Date

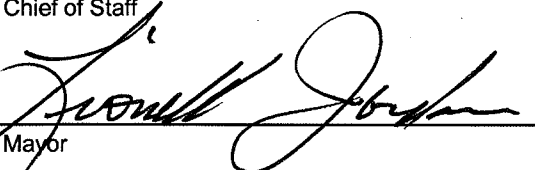
Received in City
Clerk's Office 04-20-11 P03:16 RCVD


Chief of Staff

4-22-11
Date

Received in
Mayor's Office




Mayor

4/22/11
Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Fayetteville Water and Sewer Committee

Date: 20 April 2011

Subject: Resolution Authorizing the Mayor to Accept an EPA STAG Grant for \$485,000 for Sanitary Sewer System Improvements, Replacing And Upgrading The Elkins Outfall Sewer and Area Lines

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution to accept a State and Tribal Assistance Grant (STAG) Program grant for \$485,000 from the US Environmental Protection Agency for sanitary sewer system improvements, specifically replacing and upgrading the Elkins outfall sewer line, and other lines in the area, and approving a budget amendment acknowledging receipt of the grant funds.

BACKGROUND

Fayetteville has been notified by Arkansas Natural Resources Commission that it is the recipient of \$485,000 in USEPA Grant Assistance from the STAG Program for 2010. This EPA grant funding was requested in February 2009; the City was informally notified in April, 2010, that the grant had been approved. By Resolution 74-10 on 20 April 10, the City Council approved application for this grant and designated the Mayor as the City's Authorized Representative in all matters relating thereto.

DISCUSSION

The EPA grant provides a maximum of 55% of the costs, with the remaining 45% (\$396,818) being the required minimum local match. The local match will include funds from both Fayetteville and Elkins. The project replaces and upsizes the Fayetteville owned sewer transmission line, shown on the attached map, which carries flow from the end of the Elkins line, as well as Fayetteville owned lines in this area. A preliminary design report (PDR) was completed in 2000 and updated in 2010. The PDR confirmed the necessity of a larger diameter pipe due to increased capacity needs. It is anticipated that these grant funds will be used primarily for construction.

BUDGET IMPACT

Replacement and upsizing of this sewer main is a budgeted project; the Fayetteville portion will be paid from impact fee funds as the project is a capacity increase. The grant proceeds will be combined with the City's budgeted funds and a cost share of up to \$150,000 from Elkins. The budget amendment recognizes the grant revenue. An additional budget amendment, recognizing the Elkins' cost share, will be required when the construction contract is awarded.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING ACCEPTANCE OF A STATE AND TRIBAL ASSISTANCE GRANT (STAG) IN THE AMOUNT OF \$485,000.00 FROM THE U. S. ENVIRONMENTAL PROTECTION AGENCY FOR SANITARY SEWER SYSTEM IMPROVEMENTS IN THE AREA OF AND INCLUDING THE ELKINS OUTFALL SEWER LINE, 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 authorizes acceptance of a State and Tribal Assistance Grant (STAG) in the amount of \$485,000.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements in the area of and including the Elkins outfall sewer line.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A", recognizing the revenue.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

A. 8 **V11.0222**
STAG Grant – Sanitary Sewer
~~System Improvements~~

\$485,000 is requested in the Sewer Improvements account. This action is to recognize receipt of \$485,000 State and Tribal Assistance Grant (STAG) for sanitary sewer improvements, specifically replacing and upgrading the Elkins outfall sewer line, and other lines in the area.

TOTAL BUDGET ADJUSTMENT	485,000	485,000		
	Increase / (Decrease)		Project.Sub	
Account Number	Expense	Revenue	Number	
	-	-	.	
5400.5700.5815.00	485,000		10010 .	1
5400.0940.4309.00		485,000	10010	1
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EXHIBIT
4

XP - 00F27401 - 0

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 04/08/2011	
		PRG XP -	DOC ID 00F27401	AMEND# - 0		
		TYPE OF ACTION New				MAILING DATE 04/15/2011
		PAYMENT METHOD: ACH				ACH# 66890
RECIPIENT TYPE: Municipal		Send Payment Request to: Las Vegas Finance Center				
RECIPIENT: City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701 EIN: 71-6018462		PAYEE: City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701				
PROJECT MANAGER Mr. David Jurgens 113 West Mountain Street Fayetteville, AR 72701 E-Mail: djurgens@ci.fayetteville.ar.us Phone: 575-575-8318		EPA PROJECT OFFICER Gene Wossum 1445 Ross Avenue, Suite 1200, (6WQ-AP) Dallas, TX 75202-2733 E-Mail: Wossum.Gene@epamail.epa.gov Phone: 214-665-7173		EPA GRANT SPECIALIST Sharon Beets Grant Programs Section, (6MD-CG) E-Mail: Beets.Sharon@epamail.epa.gov Phone: 214-665-2207		
PROJECT TITLE AND DESCRIPTION City of Fayetteville-Elkins Outfall Line Rep. Replacement of 4,500 feet of 10 inch sanitary sewer with 18 inch line plus the rehabilitation of approximately 90 manholes and 20,000 linear feet of sewer line.						
BUDGET PERIOD 04/01/2011 - 12/31/2013		PROJECT PERIOD 04/01/2011 - 12/31/2013		TOTAL BUDGET PERIOD COST \$881,818.00		
				TOTAL PROJECT PERIOD COST \$881,818.00		
NOTICE OF AWARD						
Based on your application dated 06/04/2010, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$485,000. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$485,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS Grant Programs Section, 6MD-CG 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733			ORGANIZATION / ADDRESS U.S. EPA, Region 6 Water Quality Protection Division (6WQ) 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official		TYPED NAME AND TITLE Donna Miller, Chief Grant Programs Section		DATE 04/08/2011		
AFFIRMATION OF AWARD						
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION						
SIGNATURE		TYPED NAME AND TITLE Lioneld Jordan, Mayor		DATE		

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1106WA0013	11	E4C	0600G6B	202B51E	4192			485,000
									485,000

Approved Budget	
Program Element Classification (Construction)	Approved Allowable Budget Period Cost
1. Administration Expense	\$0
2. Preliminary Expense	\$0
3. Land Structure, Right Of Way	\$0
4. Architectural Engineering Basic Fees	\$0
5. Other Architectural Engineering Fees	\$0
6. Project Inspection Fees	\$0
7. Land Development	\$0
8. Relocation Expenses	\$0
9. Relocation Payments to Individuals & Bus.	\$0
10. Demolition and Removal	\$0
11. Construction and Project Improvement	\$881,818
12. Equipment	\$0
13. Miscellaneous	\$0
14. Total (Lines 1 thru 13)	\$881,818
15. Estimate Income	\$0
16. Net Project Amount (Line 14 minus 15)	\$881,818
17. Less: Ineligible Exclusions	\$0
18. Add: Contingencies	\$0
19. Total (Share: Recip 45.00% Fed 55.00%)	\$881,818
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$485,000

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
April 19, 2011**

A meeting of the Fayetteville City Council was held on April 19, 2011 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, Kinion, Petty, Tennant, Ferrell, Adams, 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: I would like to recognize Alana Massey and the Spring International students from the Ford Fellows. It's wonderful to have you here.

Mayor Jordan announced that the Northwest Arkansas Land Use Planning Program received a National Green Infrastructure Implementation Award. He stated this award winning project is a result of hard work and a partnership between the Fayetteville Natural Heritage Association Representatives, Beaver Water District and the Arkansas Forestry Commission.

Dr. Bob Caulk, FNHA Chair spoke on the success of the project and stated this is where real success comes from when the product of your work is used by the community as we go forward and grow and it's used in guiding discussion. That is personally very satisfying.

City Council Meeting Presentations, Reports and Discussion Items:

Botanical Garden Annual Report – Walt Eilers and Ron Cox

Ron Cox with the Botanical Garden Society of the Ozarks gave a brief presentation on the highlights of events that took place in 2010.

Alderman Lewis: I am glad to hear that the Earth Day Celebration with kids is still going on because in spring of 2005 I took my 8th Graders and it has really grown since then. It is really good to hear that it has continued and you have 1,900 students coming.

Walt Eilers, City Representative on the Botanical Garden Board stated you asked me to make sure that people got to the garden who could not otherwise afford to get there. Each of you have in your mailbox your first 100 guest passes. He listed other organizations that have been provided with guest passes.

Mayor Jordan: Thank you all very much. I think that the Botanical Gardens are one of the Crown Jewels of this City and I think the Council would certainly agree with that. You have done a wonderful job.

Agenda Additions:

Alderman Petty: Part of the discussion around the pedicabs was about the safety concerns and I have an amendment here that would require pedicabs to have a sound warning device and an identification and phone number on the back of the vehicle.

Alderman Petty moved to add the following ordinance to the agenda. Alderman Adams seconded the motion. Upon roll call the motion passed unanimously.

Amend §117.108 Pedicab Equipment Inspections: An ordinance to Amend §117.108 **Pedicab Equipment; Inspections** of the Fayetteville Code by enacting requirements for a sound-warning device and an identification and phone number displayed on the rear of all pedicabs.

This ordinance was added to New Business Item # 1

Alderman Ferrell: On the Consent Agenda I had communications with Victor Rosetta and he said he would like to speak to the City Council regarding Consent Item # 10. Could we remove that and put it before unfinished business.

Mayor Jordan: Sound good to everybody? Do we need any kind of motion on that?

City Attorney Kit Williams: No, any Alderman can remove something.

Consent:

Approval of the April 5, 2011 City Council meeting minutes.

Approved

Bid #11-27 R&R Truck and Trailer Manufacturing, Inc.: A resolution awarding Bid #11-27 and authorizing a contract with R&R Truck & Trailer Manufacturing, Inc. in the amount of \$43,835.00 for the purchase of two (2) thirty-five foot (35') mobile litter conveyors, and approving a budget adjustment.

Resolution 57-11 as recorded in the office of the City Clerk

Bale Chevrolet, Street Maintenance Division: A resolution authorizing a contract with Bale Chevrolet of Little Rock, Arkansas in the amount of \$20,404.00 for the purchase of one (1) Chevrolet pickup truck pursuant to a state procurement contract for use by the Street Maintenance Division, and approving a budget adjustment.

Resolution 58-11 as recorded in the office of the City Clerk

Landers Dodge, Traffic Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of \$13,863.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Traffic Division, and approving a budget adjustment.

Resolution 59-11 as recorded in the office of the City Clerk

Landers Dodge, Meter Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of \$17,560.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Meter Division.

Resolution 60-11 as recorded in the office of the City Clerk

Landers Dodge, Transportation Division: A resolution authorizing a contract with Landers Dodge of Benton, Arkansas in the amount of \$17,560.00 for the purchase of one (1) Dodge Dakota pickup truck pursuant to a state procurement contract for use by the Transportation Division.

Resolution 61-11 as recorded in the office of the City Clerk

Fleet Budget Adjustment: A resolution approving a budget adjustment in the amount of \$11,924.00 to transfer funds to the fleet expense account.

Resolution 62-11 as recorded in the office of the City Clerk

Parks Top Dresser Budget Adjustment: A resolution approving a budget adjustment in the amount of \$19,900.00 for the purchase of a top dresser for the Parks Division.

Resolution 63-11 as recorded in the office of the City Clerk

McClelland Consulting Engineers, Inc. Amendment #2: A resolution approving Amendment #2 to the engineering services agreement with McClelland Consulting Engineers, Inc. in the

amount of \$247,013.00 for construction and design phase services for the Highway 265 water and sewer relocations project, and approving a \$20,000.00 project contingency.

Resolution 64-11 as recorded in the office of the City Clerk

Bid #11-28 Garney Companies, Inc.: A resolution awarding Bid #11-28 and authorizing a contract with Garney Companies, Inc. in the amount of \$4,989,135.00 for the construction of Highway 265 water and sewer replacements, approving a project contingency of \$200,000.00, and approving a budget adjustment.

This resolution was removed from the Consent Agenda for discussion.

McClelland Consulting Engineers, Inc. Task Order #2: A resolution approving Task Order #2 to a contract with McClelland Consulting Engineers, Inc. in the amount of \$12,900.00 to develop and bid an airport security improvements project for Fayetteville Executive Airport-Drake Field contingent upon receipt of a grant award, authorizing application for and acceptance of a grant from the Arkansas Department of Aeronautics in the amount of \$144,000.00, and approving a budget adjustment.

Resolution 66-11 as recorded in the office of the City Clerk

Alderman Thiel moved to approve the Consent Agenda with Item # 10: Bid # 11-28 Garney Companies, Inc. removed from the Consent Agenda for discussion. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

The following resolution was removed from the Consent Agenda for discussion.

Bid #11-28 Garney Companies, Inc.: A resolution awarding Bid #11-28 and authorizing a contract with Garney Companies, Inc. in the amount of \$4,989,135.00 for the construction of Highway 265 water and sewer replacements, approving a project contingency of \$200,000.00, and approving a budget adjustment.

Alderman Ferrell: Mr. Rosetta sent an email saying that he had questions and would like to be heard at the Council meeting.

Victor Rosetta, with Rosetta Construction gave a brief history of his company projects. Our bid was rejected for this project and there was a cost difference between our bid and the bid of Garney Companies of nearly \$90,000. The Act of Assurance form was not part of an addendum that changed the entire bid form. A couple of sheets which includes this Act of Insurance form was left within the spec book and was not completed by our firm. Nine bids were received and there were two other contractors, one third of the bidders, that did not sign this Act of Assurance form. The City's Legal Council recommended not waiving this irregularity and to not consider our bid. It is the right of the City but in this particular case the City may have to pay additional dollars for something that does not impact the bottom line of that bid.

He explained what an Act of Assurance was. He pointed out various reasons why the City should reconsider this bid.

Alderman Petty: What was your bid amount?

Victor Rosetta: Our bid was \$4,899,365.

Alderman Lewis: We discussed this at the Water and Sewer meeting. You mentioned that the Assurance forms are State and Federal forms.

David Jurgens, Utilities Director: The form was not filled out.

Alderman Lewis: When you were talking about the Act of Assurance, you said those are already a part of the State and Federal?

Victor Rosetta: Yes if you review what David has provided the first three items are quoting State and Federal regulations. We have to do this regardless of whether it was within the specs. They tell us that we have to abide by all Federal and State regulations. Part of the requirements which was in the bid form was to provide a Statement of Bidders Qualification. We provided that and the issue of debarment and suspension is a question asked within that statement which has been signed and notarized and was also included in our bid. David and I have discussed why one third of the bidders failed to sign this. I can't explain it other than the bid form itself, which was changed, was in a package separate from the addendum that we completed, perhaps because of that we missed this Assurance form. It was a mistake. Dollars to community are very important so if it could be rebid or if this is looked at as an irregularity in the bid and could be reconsidered we would be grateful.

David Jurgens spoke highly of Rosetta Construction and explained why their bid could not be accepted. On the front page of the handout it specifically says that "bidders shall execute the following contractors Act of Assurance form and submit it with the other bid documents. Bids not including an executed Act of Assurance form will not be accepted." That does not give us the choice or option of waiving that as an irregularity or informality. We discussed this and the consensus was unanimous that unfortunately we cannot award this to Rosetta Construction. There is a strict timeline on this project. We have never re-bid packages when we have had a responsive responsible bidder that was within the allocation of the cost. It is not a viable option to re-bid.

Alderman Petty: Does the City Council have the power to accept Rosetta's bid contingent upon the Assurance form?

City Attorney Kit Williams: I do not think the City Council does. The Assistant City Attorney spoke with Purchasing about this but I support his opinion. The provision in there that you can occasionally accept something that has a technical problem would go more toward someone forgetting to put the date down when they sign their name or something like that. We have not tried to waive something. If we go down that road we don't have a bidding system if you waive

something that says it won't be waived. You could not accept any of the bids and require it to be re-bid. That is your only legal option at this point in time.

Alderman Petty: I am not interested in re-bidding the project. I am a little disappointed with that answer. I guess I would like to go with staff's recommendation on that advice.

Alderman Ferrell: David, this has happened before where people have turned in a bid and forgot to have stuff signed and we had to reject it.

David Jurgens: Yes sir.

Alderman Thiel: Based on what David has told us and my understanding of this I would move that we go ahead and pass the resolution.

Alderman Lewis: I appreciated the discussion on it.

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

Resolution 65-11 as recorded in the office of the City Clerk.

Unfinished Business:

Amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes: An ordinance to amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes (B) Route Approval and (F) of the Fayetteville Code to allow use of pedicabs on streets with a posted speed limit of thirty-five (35) miles per hour or higher if authorized by the Transportation Services Director and (D) to allow pedicabs to operate on Scull Creek Trail, Mud Creek Trail and Frisco Trail. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan read the following amendment that was tabled at the April 5, 2011 City Council Meeting.

- A. Amend Section 3 of the proposed ordinance Amend §117.102 Pedicab Permitted Zone of Operation and Approved Fixed Routes** by striking Section 3 in its entirety and replacing it with the following new Section 3, which shall read as follows:

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §117.102 **Pedicab Permitted Zone of Operation And Approved Fixed Route** of the Fayetteville Code by repealing (D) in its entirety and enacting a new (D) as follows:

“(D) Operation on City Trails. No Pedicab shall be operated on city transportation trails (Frisco Trail, Scull Creek Trail, Mud Creek Trail, etc.) without the express prior approval of the date, time, route and fee for the special event by the Director of Parks and Recreation. Pedicabs may not be operated on any city recreational trails in city parks (such as Lake Fayetteville, Gulley Park, Wilson Park, etc.).” This amendment was tabled at the April 5, 2011 City Council meeting to the April 19, 2011 City Council meeting.

Alderman Adams spoke on her efforts along with Alderman Petty and Don Marr to come up with a solution that would be the safest.

Alderman Adams moved to amend the amendment. Alderman Petty seconded the motion.

Don Marr, Chief of Staff gave a brief description of the areas of concern and stated those areas would be restricted for pedicab usage due to safety reasons.

Mayor Jordan: Do we need to strike anything on the original one Kit?

City Attorney Kit Williams: No, I prepared a new subsection “D” and we should probably just use that rather than try to strike and replace.

City Attorney Kit Williams read the amendment as follows:

Amend Section 3: §117.102 **Pedicab Permitted Zone of Operation and Approved Fixed Route** of the ordinance by repealing (D) of the Fayetteville Code in its entirety and enacting a new (D) as follows:

“(D) Operation on City Trails. Pedicabs may be operated on the entire length of the Frisco Trail, the Scull Creek Trail, the Mud Creek Trail, and other transportation trails during the hours of 10:00 p.m. until 5:00 a.m. except that portions of these trails may be closed to pedicabs by the Parks and Recreation Director for special events or if the trail section is deemed too narrow for pedicabs or if use of pedicabs on the section of trail could cause safety issues. Pedicabs may not operate on any recreation trails in city parks (such as Lake Fayetteville, Wilson Park, Gulley Park, etc.).”

Alderman Thiel: I think this is a good compromise and I can support it. I think it is more acceptable to the citizens also.

Alderman Gray: I had reservations earlier but I think this is a great compromise.

Jason Sexton, Fayetteville Pedicab Company stated I am excited about the compromise too but we would still like to ask a couple things here. The fact that we are never allowed on a park trail is a little bit restrictive for us. Hopefully we could work something out to where we would be allowed on the park trails explicitly with permission and only during events. We would also like to ask for all day access. Is safety the main concern here with pedicabs?

Mayor Jordan: That is one of my concerns.

Jason Sexton: I would like you guys to reconsider what is safe on a multi use trail. I can find no incident of a pedicab being involved in any kind of accident on any bike trail anywhere. You should really be looking at a multi use trail mixing pedestrians and bicycles. If it is in fact a bike trail then I feel like I have a right to be there. He spoke on the benefits to having pedicabs on the trail and asked the Council to reconsider this and table the part about the trail.

Mayor Jordan: If I understand what you are asking, the 35 MPH would be split off from the trails system.

Jason Sexton: Yes sir.

Mayor Jordan: That would certainly be a decision the Council would have to make.

Alderman Thiel: I would support that.

Stephan Pollard, a citizen stated if we can show that pedicabs are being used for commuting purposes this opens up an entirely new funding set here. There might be a funding source from the State Highway Department if you can show that the trails are being used for commuting purposes. He spoke on how safe the trails would be if pedicabs were allowed to be on the trails. He spoke in favor of the amendment.

Melissa Jackson, resident of 11 W. Montgomery St. stated pedicabs should use the roads not the trails. She listed reasons why they should not be allowed on the trails.

Wesley Owens, a citizen voiced his concerns with pedicabs being allowed on the trails. He stated it would be good to determine a set width for safety on these areas that have been identified and we need to make it across the board. He pointed out some other areas that needed to be added to the list of concerns.

City Attorney Kit Williams: That part is done administratively and is not a case by case decision by the City Council. That is a decision by the Parks and Recreation Director.

Wesley Owens: Will they use this map while determining that?

City Attorney Kit Williams: I am sure she will look at that and also any other information she might want to look at.

Wesley Owens pointed out the area between Maple and Dickson Street which is extremely narrow.

Sibylle Barton voiced her concerns with allowing pedicabs on the trails. She stated I am against it and would like them to at least be limited to the evening hours only.

Bob Barton, a citizen stated they have no reason to be on the trails. They are for families and they need to be kept safe.

Alderman Petty: I would like to make a motion to separate these two sections and then after doing that we can resume discussions.

City Attorney Kit Williams: I don't think you can just cut it into but you can simply not consider Section 3 by taking it out of the ordinance and bring it back as a new ordinance. I don't think you can pass half an ordinance and consider the other half later on.

Alderman Petty: I am happy with the compromise that Alderman Adams and I have come up with. I am curious are there other members of the Council that would be willing to meet with Mr. Sexton and consider what he has had to say tonight and see if there are legitimate reasons for allowing them on the recreational trails.

Alderman Ferrell: I am willing to meet with him.

Alderman Lewis: I am willing to as well. My overall perception on this is to me it's a really good thing that we have so much interest in the trail system and that we want to use it as a transportation mechanism more and more. The idea that we have a compromise here that would get us towards this. We need alternative transportation. I think it would make the trails safer and there would be more presence on the trails. I think we could just move forward with the amendment that has been presented and I like the idea that they would be able to use the streets.

Alderman Kinion: We have reached a compromise on the issue of safety. I have to endorse more activity on the trails which are an alternative transportation system. This compromise answers the concerns that we discussed at the previous two meetings. We have discussed it thoroughly and reached a compromise. We can revisit this at some point in the future if it needs to be amended. He spoke on how safe pedicabs are and stated I think we should move forward with the amendment as proposed. I support this and I want to get it taken care of this evening.

Upon roll call the motion passed unanimously.

Bob Barton: I just want clarification on the ordinance.

Mayor Jordan clarified the ordinance.

Alderman Adams: I would like to comment that there is a big difference when you talk about alternate transportation trails. What we are talking about here is not alternate transportation in my mind as much as we are talking about commercializing. I am very glad that we are

considering putting them on the trails and giving them a chance. I think this is a good way to try it.

Alderman Ferrell: I think we better go for this deal. I would support coming back on this, but in conclusion the trails belong to everybody that pays taxes.

Jason Sexton reminded the Council that they do not charge for rides. I like the compromise and I think it's great.

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

Ordinance 5397 as Recorded in the office of the City Clerk

Amend §174.03 Exemptions: An ordinance to amend §174.03 Exemptions of Chapter 174 Signs of the Fayetteville Code to allow advertising on pedicabs. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

Alderman Thiel moved to suspend the rules and go to the third reading. **Alderman Petty** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jason Sexton: We are only asking to advertise in the Entertainment District. The cabs and buses get to and we feel like we should get to.

Stephan Pollard: I would hate to jeopardize our existing sign ordinance where it concerns off-site advertising.

Alderman Adams: Mr. Sexton, when you don't charge a fee and you only accept gratuity's how much would your company depend on advertisements on the pedicabs to succeed?

Jason Sexton: Not knowing the situation in Fayetteville when we hatched this idea, it was a big part. It can be a very lucrative thing for a pedicab company. It is powerful and can be successful for a local business. It helps offset the nights that we don't get gratuities that we need. I don't think that our 2'x 3' sign on the back of a bicycle is going to detract from the quality of life in Fayetteville.

Alderman Lewis: You are going to have to hire new people for the new routes?

Jason Sexton: Most of our return drivers will come back. I just want the right to be a presence in the Entertainment District which has a value to a lot of businesses.

Alderman Petty: We have heard a lot of points that need proper consideration. It is a fact that every exception to the sign ordinance weakens it. However in my opinion we need to assess what that risk is from a practical perspective and decide what is fair with that in mind. In my opinion this exception would not be a substantial weakening of the sign ordinance. I think this is acceptable and I hope we pass this tonight.

Alderman Kinion: Initially I did not support this but I did get online and look at some of the advertising that you suggested. This is going to be in the Entertainment District. I am going to say that it is worth the risk to allow a tiny sign on a whimsical vehicle in our Entertainment District. If you walk down the street right now you are going to see a giant bus and a taxi with signs on it and this is inconsequential in comparison.

Alderman Thiel: These are off premises signs and when we supported allowing taxi cabs to have signs we should have realized then we were opening a door and we are going to continue to open doors. I am not going to support this.

Alderman Ferrell read a portion of a memo given to the Council by City Attorney Kit Williams and also read a portion of Ordinance 1910 approved in 1973 which allows advertising on taxicabs. He asked how many times have we been sued and how many arrests have taken place since 1973 over taxicabs? From what I have been able to determine we had zero suits over taxicabs. Chief, have you ever had anyone? This ordinance changed in 2004 but you said we did not allow taxicab advertising before that.

City Attorney Kit Williams: I was not aware that we had. I am not sure if that ordinance actually survived when we enacted the sign ordinance and I am not sure if that was in actual existence in 2004. The question for the City Council is whether you want to extend an exception like that and have another potential off site sign exception and if you feel like it is aesthetically what you want for the City and if you feel like it is enough of a danger to the sign ordinance that you don't want to support it.

Alderman Ferrell: Talking about aesthetics you're painting with an awful big brush for a sign that small. Chief as long as you have been a police officer can you ever remember anybody being arrested or having a complaint filed for an advertising sign on a taxicab?

Chief Tabor: No, sir.

Alderman Ferrell: Thank you that is all I have.

Alderman Lewis: For me is it worth the risk? To me it's the old saying of opening Pandora's Box. Once that is opened there is no going back. You're not ever going to be able to establish a sign ordinance like we have in the City because it is unique. It was established during a time when it was the first of its kind and it is looked upon by other communities with envy because we are able to protect the aesthetic value of our community. It's a great thing that we haven't had it challenged and making one more exception just takes us even closer. How risky do you want to be is the question? The pedicab signs are cute, funky, and little but it's not about that. It's about the legal ability for us to protect the sign ordinance that keeps us from having to have

billboards along the streets and big tall blinking signs. I support pedicabs it has nothing to do with that. It's about off site signs.

Alderman Tennant: I respect our sign ordinance and I love the fact that we don't have big billboards along our interstates. However, I think everybody up here is looking at the harm done by allowing these advertisements and we are weighing that against the benefit. I don't see a huge harm by having a small sign on the back of what is really a pretty small structure in the Entertainment District. There may be some businesses we don't want advertised. I think there will be some limitations but I think the benefit to the business, the City, and to keeping this business operational and successful, so it can be an alternative mode of transportation, is a good thing in the long run and it outweighs the harm.

Alderman Gray: I like the way pedicabs look just like they are. I like the esthetics. I don't think it is going to do a huge amount of harm but I think we need to listen to our attorney and not keep on weakening our law. I like the beauty of Fayetteville and I want to keep it that way.

Alderman Ferrell: If signs are allowed I don't see how we are weakening it.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-4. Alderman Kinion, Petty, Tennant, and Ferrell voting yes. Alderman Gray, Thiel, Adams, and Lewis voting no. Mayor Jordan voting yes.

Mayor Jordan: I'm going to vote in support of this. I did research on this and had the City Clerk look at all the documents and the best I can tell is the first taxicab ordinance with advertisements passed in 1973. Additions were made to it in 2004 and I don't think five pedicabs are going to make a whole lot of difference. We've had this for 38 years.

Mayor Jordan voted yes to break the tie and pass the ordinance.

Ordinance 5398 as Recorded in the office of the City Clerk

Amend §117.47 Advertising: An ordinance to amend §117.47 Advertising of the Fayetteville Code to remove authorization to place advertising signs on taxicabs. *This ordinance was left on the First Reading at the March 15, 2011 City Council meeting. This ordinance was left on the Second Reading at the April 5, 2011 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I brought this forward for the same reasons I argued earlier in that this type of thing is an exception to our sign ordinance. Regardless of when it was enacted it is an exception to our sign ordinance that causes it to be weakened.

Alderman Thiel: I want to discuss briefly why I have changed my mind. Some of us on this Council voted for the taxicab signs but we recognized that maybe that decision was not the best one. I wouldn't have a problem in six months or a year, if the pedicabs on the trails works out really well saying let's open it up. I don't have a problem with reconsidering something one way or another.

Sarah has made some good points and I feel like passing this before it leads to something else. I will support rescinding our original ordinance. I agree with the restrictions not being on the Ozark Regional Transit and Razorback Transit because they are both non-profit public mass transportation. That is one way we can help them without having to fund them anymore at any higher level than we do now by allowing them to advertise.

Alderman Petty: What if a taxicab was a non profit taxicab? Our goal with public services is to provide services at the lowest cost to the taxpayers. When it comes to buses, it is very difficult, in a region of this size, to run a non profit bus system. Those public bus systems in a region of our size require public support to exist. However, that is not the ideal scenario. The ideal scenario would be that there is enough demand that they could provide that service without a cost to the taxpayers with cost only to their customers. Taxicabs provide a very similar public transportation service, and they are able to do it privately without public funds. Advertisements are one of the ways they are able to avoid those kinds of subsidies and we should keep that in mind.

Alderman Adams: I do not plan to vote to repeal this. I don't believe we have a problem with signs on taxicabs now. The reason I voted no on the last one is because we've allowed them on trails. If we are going to have businesses on the trails then I don't want signs on the trails.

Alderman Ferrell: I don't think this put this at anymore jeopardy then we have been in before. I asked the City Attorney if he felt comfortable that he could defend that when we had cab advertising and he said yes.

City Attorney Kit Williams: I didn't mean that I would be comfortable. I would be much more comfortable if we didn't have these exceptions to the sign ordinance. You asked me if I could defend the sign ordinance and I certainly can and will defend it. I contend that it is constitutional but every exception you make makes my job harder.

Alderman Tennant: There is not a lot of advertising on the taxis right now but they may need to do that in order to save their business. I would hate for a taxicab company to close and then six months from now we realize that, if this had not been taken away, maybe they would be a legitimate business working for the people and providing a service.

Mr. Pollard: Maybe there is a way to limit the size and visibility. That is counter productive from an advertising perspective but it would also prevent potential future threats to the ordinance. What if it was license plate size and was on the sides of the cab so that only people that could see it are the ones on the sidewalks. Is it possible that you could have both worlds?

City Attorney Kit Williams: The ordinance has restrictions on the size and it must be placed only on the back. There are reasonable restrictions on the size of the sign right now. That makes it a stronger ordinance and less of a danger by having these restrictions.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 2-6. Alderman Thiel and Lewis voting yes. Alderman Gray, Kinion, Petty, Tennant, Ferrell, and Adams voting no.

This ordinance failed.

New Business:

The following ordinance was added to the Agenda at the beginning of the City Council meeting to New Business # 1:

Amend §117.108 Pedicab Equipment Inspections: An ordinance to Amend §117.108 **Pedicab Equipment; Inspections** of the Fayetteville Code by enacting requirements for a sound-warning device and an identification and phone number displayed on the rear of all pedicabs.

City Attorney Kit Williams read the ordinance.

Alderman Petty: I spoke earlier with Mr. Sexton. He already has some of these in place on a voluntary basis. He supports it 100% and I ask for your support.

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

City Attorney Kit Williams read the ordinance.

Alderman Petty 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 5399 as Recorded in the office of the City Clerk

VAC 11-3769 (Bracey): An ordinance approving VAC 11-3769 submitted by John Bracey for property located at 237 Ray Avenue to vacate a portion of a utility easement, a total of 178.7 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated we had all the utilities take a look and all have signed off recommending approval. The Planning Commission voted 8-0 in favor and we are recommending approval.

Alderman Thiel: Building Safety staff is not very busy right now so I would like to know how this slipped by?

Jeremy Pate: We probably have more inspections right now for our Building Safety inspectors than we have in a number of years. We are quite busy.

Alderman Thiel: When did this happen?

Jeremy Pate: The building was constructed in 2008 or 2009. It has currently been turned over to a new homeowner. They got an existing survey for the property. This is in a PZD and there are different building setbacks and utility easements than a normal subdivision. I would anticipate that is part of why this occurred. In addition the overhangs were originally suppose to be a 6" overhang and was increased to a one foot overhang. The option is to remove a portion of the overhang. They chose to go this route and we felt that was perfectly fine. There is still amply utility easement within that location and we are recommending approval.

Alderman Thiel: I hope we keep working on this. This is a very minor thing. It is unfair that some people have to comply and other people do it this way.

Jeremy Pate: I agree. Everyone has to comply. There are fewer of these than we use to see because we have some measures in place to correct that. I will say there are mistakes in the field by contractors as well. Those are instances we can't always catch once the roof is on and we've completed the final inspection. The choice is to ask the homeowner to remove a portion of their structure or ask them to come through this process. You all have the option to deny this application and we can go back and let the homeowner know. We view everyone on a case by case basis.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Adams was absent during the vote.

Ordinance 5400 as Recorded in the office of the City Clerk

VAC 11-3792 (U of A): An ordinance approving VAC 11-3792 submitted by H2 Engineering for property located on the north side of Douglas Street between Oakland and Storer Avenues to vacate a 15-foot wide alley right-of-way.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff is recommending approval.

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

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Gray was absent during the vote.

Ordinance 5401 as Recorded in the office of the City Clerk

VAC 11-3793 (U of A): An ordinance approving VAC 11-3793 submitted by H2 Engineering for property located on the north side of Douglas Street between Oakland and Storer Avenues to vacate a 15-foot wide utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. He stated staff is recommending approval.

Alderman Lewis: The University owns the property but is it still considered campus? Are they subject to city codes?

Jeremy Pate: Because they are a state entity they are not required to coordinate. They don't go through our building permits or inspections. We inspect any work done within our public right of way. They also pay impact fees for any water or wastewater impact they have on our system that we own. We inspect all those types of connections. We coordinate with the facilities

management group who oversees all the construction on the campus. We have quarterly meetings with them if not more regularly about different projects that are ongoing.

Alderman Ferrell: Do they have an internal sign control policy?

Jeremy Pate: Yes.

Alderman Ferrell: They are not subject to our sign ordinance.

Jeremy Pate: Theirs is stricter than ours.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously,

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third reading. Alderman Thiel 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 5402 as Recorded in the office of the City Clerk

Amend §35.19 and §35.30 Definitions: An ordinance to amend §35.19 and §35.30 Definitions of the Code of Fayetteville to change the definition of concession stands to remove the exemption for stands operated on a short term basis for festivals.

City Attorney Kit Williams read the ordinance.

Alderman Tennant: This came up in the A & P Commission meetings and we discussed the fact that at festivals there are temporary concession stands and they are not subject to the HMR tax. The businesses in Fayetteville are at a disadvantage during those things. The local businesses are the ones that are here all the time not just during festivals. I think it's a fairness issue during the times when temporary stands come in that they should be subject to the same rules as the local businesses.

Mayor Jordan: I certainly support the A & P Commission. Anybody that comes in from out of state should pay the same HMR taxes that the local businesses are paying.

Alderman Lewis: The reason I think it's a good idea is that HMR tax goes to the A & P Commission and that helps fund the festivals.

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third reading. Alderman Gray 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 5403 as Recorded in the office of the City Clerk

Washington Regional Medical Center Roundabout: An resolution to designate the location of Washington Regional Medical Center as the new location of and the successor hospital of the City Hospital, to approve and authorize the mayor to execute a quitclaim deed to convey the current site of the City Hospital to Washington Regional Medical Center, all contingent upon the concurrent action of the Board of Trustees of the City Hospital to designate Washington Regional Medical Center as the successor City Hospital and the donation of approximately 1.1 acres by Washington Regional Medical Center for construction of the roundabout at North Hills Boulevard and Futrall Drive.

Chris Brown, City Engineer gave a brief description of the resolution.

Alderman Ferrell: How long ago was it when you first started to acquire this parcel? How many are still not acquired?

Chris Brown: This project has two properties. Washington Regional on one side and the Medical Park on the other. We made the offers in about August of last year. Both of these are large acquisitions with a lot of money involved. There have been things that have taken awhile to work through.

Alderman Ferrell: I represent the citizens of Fayetteville. I don't represent the hospital although I am very glad to have such a great hospital here. When this was presented to me at the Street Committee a swap was talked about. A swap for the easement in lieu of the City paying for the appraised value, \$172,000 is the appraised value, how did we determine that was the value that the hospital was willing to give for that trade?

City Attorney Kit Williams: This is the value that our appraiser placed on it and sometimes when you do condemnations you get a much higher value by the owner of the property. They claim that the property is worth much more. I'm not asking the City Council, in this resolution, to accept the counter offer because there were certain things within that that I was unwilling to recommend to you. This requires a quitclaim deed not a limited warranty deed. I have concerns about the title to this property. There were two deeds, one in 1906 and then a sequent one in

1909 both by the same grantors. The one in 1909 made it easier to transfer any funds from this property to the replacement successor City Hospital. That is going to be the duty of Washington Regional to make sure that happens. I don't want to put us out there presenting some sort of warrant to them.

I'm not asking you to accept the counter offer. I'm asking in this resolution, as stated in various sections of the resolution, which is appointing new members, accepting gratefully their donation of this property regardless of what its value is, and conveying by quitclaim deed to the hospital the land that we own in trust. We don't own the land for our own value.

I believe in the early 1900 the citizens of Fayetteville used tax dollars to build the first City Hospital on land donated by the Stone family. That has certainly served us through many generations very well. At this point in time the true city hospital that is in Fayetteville is Washington Regional. That is one thing I have asked that you would do and that is something that must be done under the deed of 1909 in order for them to be able to receive any of the proceeds from the land if they decided to sell. They could sell the city hospital land and apply the proceeds to Washington Regional's other hospital needs. The bottom line is this seems to be a situation where we can save our tax dollars, the cost of acquiring this 1.1 acre no matter how much that would be and moving the sign. We think the minimum would be about \$200,000, we might have to negotiate and it could be much higher. This would be something where we could work with them. They are from a logical point of view the replacement city hospital and therefore would be entitled to the proceeds of this. Our treasury is not entitled to the proceeds.

Alderman Ferrell: Because of the trust if they sell it the money would have to go towards something at the hospital if it's declared the city hospital.

City Attorney Kit Williams: Yes, the deed says it must be devoted exclusively for hospital purposes. We want to thank the Stone family for their generous donation in 1906 and 1909 and to honor the terms of their deed, we as a trustee of this property must honor their intent as best we can. Their intent was that if the city hospital ever had to move then the proceeds from the sale of the land would be devoted to the new city hospital which I'm asking you to designate Washington Regional as the new city hospital.

Alderman Ferrell: I contacted two survivors that were on the board and visited with both of them about this and they thought it was a good deal.

Alderman Thiel: I appreciate Bobby's concerns about the taxpayer's money being used to build the original hospital. I think we tried to ascertain how much that amounted to and I don't think we were able to in the Street Committee. Kit pointed out that the citizens had the use of the hospital for many years and we are getting \$172,500 for it in this trade. I feel like we are getting a value for this. We can't sell this property. I feel this is the way we need to move forward and I support this.

Alderman Lewis: If I were going to be asked to sign it I wouldn't want to sign it until I knew what the exact interest was that I was trading and \$172,000 does not equal the interest of that

property and building. I don't feel like I've been told enough about what our interest is in it. Would we have a right to sell it?

City Attorney Kit Williams: We would not have a right to sell it in order to enrich our City treasury. The deed says any proceeds you get from selling the land must be used exclusively for hospital purposes at the new city hospital. Unless we want to establish a new city hospital where we can put those funds in it we can't receive any of the proceeds back. The value of the land that the city hospital sits on now is immaterial because we only hold it in trust. We are not the beneficiary. The beneficiary is the city hospital. We own the land legally but we don't have the right to profit from the sale of the property.

Alderman Lewis: From a citizen's point of view when spending \$172,000 you think about what their intent was. If it gets absorbed into the corporate system of Washington Regional, which is a very good hospital, but it gets lost into the system and not identified as a major part our community. This community came together and built this and it's a bid deal. I feel the history is worth more than \$172,000.

Alderman Thiel: At the Street Committee you suggested that Washington Regional was willing to replace their sign. Is that still agreeable to them? You said that was worth additional money too.

Woody Basset 1555 Sunset Place, Chairman of the Board Washington Regional Hospital: It is our intention to move the sign and bear the costs. I believe this will be a win win if you pass this resolution and we move this forward. It is our intention to build a replacement facility to replace what we have in the way of long term nursing care. The Fayetteville City hospital has served this community extremely well for a number of years but the building is old and we believe it is time to do something about it. We need your help.

Alderman Adams: What makes us decide that the city hospital is Washington Regional?

Woody Basset: Mr. Williams and his staff have done a great job looking at it from the city's point of view as has Mr. Olmstead in looking at it from a hospitals point of view. The Washington Regional Medical Center, before moving to North Hills was located on North Street and College and, was built and opened in 1950. Since 1950 Washington Regional has been "the hospital."

Alderman Lewis: I think it sounds good that Washington Regional would want to improve the facility. According to this the thing that would allow that would be us calling Washington Regional the City Hospital. The City could still maintain the trust.

City Attorney Kit Williams: The deed in 1909 says we shall hold this land in trust and maintained as a city hospital. In case it should be determined here after to change the location of said hospital to some other point in said city in such case the entire proceeds of the above described premises shall constitute a trust fund to be devoted exclusively to the establishment and maintenance of such city hospital at the point selected. We hold the land in trust but if the city hospital is now Washington Regional which I would have to agree that it is and we designate

that and the City Hospital Board of Directors designates it as a new city hospital then any assets remaining in this property, the land, buildings, and any other assets would be in a trust fund that would be designated for Washington Regional as the new city hospital for their use exclusively for the maintenance and establishment of such hospital.

The only trust situation we have is the ownership of this particular piece of land. Once we have conveyed that, and we would have to do it for them to get any proceeds from the property, then our trust situation is over and we have done what the Stone family asked us to do.

Woody Basset: I can't answer the question any better than that, thank you that is the answer. He thanked the Council for listening and also thanked them for their service.

Alderman Lewis: You are saying this is just allowing what?

Mayor Jordan: The Mayor to negotiate a contract.

City Attorney Kit Williams: It authorizes the Mayor to sign a contract. We don't have a contract directly in front of you and it is not an acceptance of their counter offer because it will include a quitclaim deed and not a warranty deed. It will follow what is outlined before you which would be to convey this property to them with the quitclaim deed and in exchange we will accept their donation of this 1.1 acres to the City. It is a reasonable donation because the roundabout should help Washington Regional, its patients, and staff. It is designed to correct the congestion that is there. We appreciate their donation and we think this money will be well spent to help the congestion problem.

Alderman Petty moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 6-2. Alderman Ferrell and Lewis voting no.

Resolution 67-11 as recorded in the office of the City Clerk.

Landers Chevrolet, Sewer Maintenance Division: A resolution authorizing a contract with Landers Chevrolet in the amount of \$67,767.00 for the purchase of three (3) Chevrolet Silverado pickup trucks pursuant to a state procurement contract for use by the Sewer Maintenance Division.

Alderman Ferrell: I asked Barbara if she could give me the price difference between three Dakota's and three Silverado's.

Dennis Pratt: The price difference between the three is \$5,030 a piece higher for the Silverado. That would be \$15,090.

Alderman Ferrell: Mayor, we are a green community and I think when you drive Silverado pickups it doesn't scream out green. If you drive a Dakota pickup, which is smaller and uses less fuel, I think it is a better deal. The Equipment Committee vote was 3-1.

Alderman Thiel: Why was the rest of the committee convinced that this was a right thing to do?

Dennis Pratt: When this was presented we brought forward the operation that these three vehicles performed. They are supervisor trucks, half ton 4x4 trucks. Before we made any commitment to what size they would be we brought them in and inspected them. We looked at the tools they carry and what their operation required for them to go out in the field and do the work. We look at each individual vehicle and we weigh them with the load to see if a smaller vehicle could do it. These vehicles for their operation need to be half ton 4x4 pickups. They go off road they follow the pipe they don't follow the road. We do not want to hinder their operation for what they are supposed to be doing out in the field.

Mayor Jordan: That is the reason you went with the bigger trucks.

Dennis Pratt: That's correct.

Alderman Kinion: This is specifically to meet the demand of the job associated with this particular vehicle.

Dennis Pratt: That's correct.

Alderman Thiel moved to approve the resolution. Alderman Lewis seconded the motion.

Alderman Adams: I appreciate Bobby bringing this up because this gives the public a chance to hear your explanation and to see that the Council is paying attention.

Don Marr: Alderman Ferrell and former Alderman Lucas were two huge advocates of this kind of discussion taking place over the last three years. Just because we bring a vehicle forward that is a 4x4 doesn't mean we haven't given it that level of consideration. The reason why we have the ninth best fleet is because of the level of management in that department.

Alderman Ferrell: Dennis has worked to bring the number of 4x4's down.

Alderman Gray: I asked our Fleet manager to monitor carefully a new purchase and make sure that we make good decisions. Our Chief of Staff has assured me that he will do that. I appreciate his monitoring and careful watching. That is what we need him to do. Thank you.

Upon roll call the resolution passed 7-1. Alderman Ferrell voting no.

Resolution 68-11 as recorded in the office of the City Clerk.

Announcements:

Alderman Lewis announced the upcoming Ward 4 meeting.

City Attorney Kit Williams announced the Town Hall meeting at the Law School.

Mayor Jordan stated the Council did an exceptional job tonight.

Meeting adjourned at 8:50 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

UNOFFICIAL

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 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting May 3, 2011

A meeting of the Fayetteville City Council will be held on May 3, 2011 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

City Council Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

1. Certificate of Achievement for Excellence in Financial Reporting

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the April 19, 2011 City Council meeting minutes.
2. **Bid #11-32 Nichols Erosion Control, Inc.:** A resolution awarding Bid #11-32 and authorizing a contract with Nichols Erosion Control, Inc. in the amount of \$31,430.00 for the purchase and installation of sod for two new soccer fields at the Lewis Soccer Complex.

3. **Bid #11-22 Multi-Craft Contractors, Inc.:** A resolution awarding Bid #11-22 and authorizing a contract with Multi-Craft Contractors, Inc. in the amount not to exceed \$62,237.00 for HVAC and repair services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
4. **Bid #11-23 Schefers Roofing:** A resolution awarding Bid #11-23 and authorizing a contract with Schefers Roofing in the amount not to exceed \$60,554.40 for roofing repairs and upgrades related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
5. **Bid #11-25 Heckathorn Construction Company, Inc.:** A resolution awarding Bid #11-25 and authorizing a contract with Heckathorn Construction Company, Inc. in an amount not to exceed \$40,742.00 for window and door replacements related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
6. **Bid #11-33 Natural State Insulation:** A resolution awarding Bid #11-33 and authorizing a contract with Natural State Insulation in an amount not to exceed \$25,885.10 for attic seal and installation services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
7. **Bid #11-34 Rocky Grove Sun Company:** A resolution awarding Bid #11-34 and authorizing a contract with Rocky Grove Sun Company in an amount not to exceed \$170,150.00 for solar equipment and installation related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

B. Unfinished Business:

1. None

C. New Business:

1. **RZN 11-3777 (2143 North Ruppel Road/Daugherty):** An ordinance rezoning that property described in rezoning petition RZN 11-3777, for approximately 4.86 acres, located at 2143 North Ruppel Road from RSF-1, Residential Single-Family, 1 unit per acre to R-O, Residential Office.
2. **VAC 11-3785 (221 W. South St./Knight):** An ordinance approving VAC 11-3785 submitted by Kristen Knight for property located at 221 West South Street to vacate a portion of an un-constructed right-of-way, a total of 0.03 acres.
3. **Amend Ordinance No. 2990 and Ordinance No. 4278:** An ordinance to amend Ordinance No. 2990 of March 6, 1984 to acknowledge that some Fayetteville citizens and businesses are now within the Prairie Grove Telephone Company franchise area and to apply the same franchise fee to both telephone companies, to amend Ordinance No. 4278 of November 21, 2000 and to codify these combined ordinances.

4. **Amend §72.58 Off-Street Parking Facilities; Rules and Rate (K):** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates (K) to explicitly prohibit a driver driving around or improperly through a gated parking lot exit.
5. **Amend §72.58 Off-Street Parking Facilities; Rules and Rates:** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates of the Fayetteville code to add event parking for large Walton Arts Center Events.
6. **Walton Arts Center Contract to Provide Educational and Entertainment Services for Fayetteville Citizens:** An ordinance to waive competitive bidding and award a contract for educational, entertainment and administrative services in 2011 to the Walton Arts Center Council, Inc. in the amount of \$250,000.00.
7. **Walton Arts Center Contract Parking Service:** An ordinance to waive competitive bidding and award a contract for parking service in 2011 to the Walton Arts Center Council, Inc. in the amount of \$39,000.00.
8. **Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars.

City Council Tour: Monday, May 2, 2011 at 4:30 p.m. The Council will tour the Fayetteville Executive Airport-Drake Field

Announcements:

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.

City of Fayetteville Staff Review Form

A. 2
 Bid #11-32 Nichols
 Erosion Control, Inc.
 Page 1 of 8

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

5/3/2011

City Council Meeting Date
 Agenda Items Only

Byron Humphry
 Submitted By

Parks Maintenance
 Division

Parks and Recreation
 Department

Action Required:

Approve a resolution awarding BID #11-32 and a contract with Nichols Erosion Control, Inc. in the amount of \$31,430 for the sod and installation of the sod for two new soccer fields at Lewis Soccer Complex.

\$31,430

Cost of this request

\$ 60,000.00

Category / Project Budget

Lewis Soccer Field Improvements

Program Category / Project Name

2250.9255.5806.00

Account Number

\$ -

Funds Used to Date

Park Improvements

Program / Project Category Name

11001.1

Project Number

\$ 60,000.00

Remaining Balance

Parks Development

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Connie Edmonson
 Department Director

4-14-11
 Date

Previous Ordinance or Resolution #

Dr. B. Kelly
 City Attorney

4-14-11
 Date

Original Contract Date:

Original Contract Number:

Paula A. Becker
 Finance and Internal Services Director

4-15-2011
 Date

Received in City
 Clerk's Office

04-14-11 P03:23 RCVD

Jim Man
 Chief of Staff

4-18-11
 Date

Received in
 Mayor's Office



Donald Jordan
 Mayor

4/18/11
 Date

Comments: Sod installation must be completed and fields playable by mid-August for the beginning of the fall soccer season.



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *C.E.*

From: Byron Humphry, Park Maintenance Superintendent *BH*

Date: April 13, 2011

Subject: Bid # 11-32 Construction – Installation of Sod for Soccer Field

PROPOSAL:

The Parks Department utilizes soccer fields at Asbell Elementary, Lewis Soccer Complex, and Walker Park for spring and fall soccer leagues that have over 1,448 participants. The fields at Asbell are leased from Fayetteville Public Schools and the fields at the Lewis Soccer Complex are leased from the University of Arkansas. Last June, the Fayetteville Public School system informed us they were terminating our 10 year lease at Asbell to build tennis courts. According to the terms of the lease agreement, they were required to give us a one year notice of termination. The one year notice ends on June 4, 2011. With the loss of Asbell's soccer fields, we would have to limit the number of kids playing soccer. To help offset this loss of soccer fields, the Parks Department plans to construct two additional fields at the Lewis Soccer Complex. The lease agreement with the University of Arkansas for the Lewis Soccer Complex expires on June 30, 2018. These two additional fields will accommodate our soccer program until new fields are developed at the Regional Park.

The University of Arkansas has given us approval to construct the additional fields. Minor grading will be required to create a smooth playing surface which will be permitted by Development Services. Once grading is complete and irrigation is installed by Park staff, sod installation of approximately 140,000 sq ft will be contracted.

The bid for sodding the newly constructed fields opened on April 4th. Three vendors including Goodwin & Goodwin Inc., GroundSERV, and Nichols Erosion Control, Inc. submitted bids with Nichols Erosion Control, Inc. being the low bid in the amount of \$31,430.

If approved, the sodding of the soccer fields is anticipated to begin in mid-May, 2011. Fields must be completed and playable by mid-August for the beginning of the fall soccer season.

RECOMMENDATION:

A resolution awarding BID #11-32 and approval of a contract with Nichols Erosion Control, Inc. in the amount of \$31,430 for the sod and installation of the sod for two new soccer fields at Lewis Soccer Complex.

BUDGET IMPACT:

The project is funded with 2011 Park Development funds. The total project budget is \$60,000 that will include grading, irrigation, and sod installation.

Attachments:

Bid Tab
Contract Agreement Signed by Contractor
Purchase Requisition

RESOLUTION NO. _____

A RESOLUTION AWARDED BID #11-32 AND AUTHORIZING A CONTRACT WITH NICHOLS EROSION CONTROL, INC. IN THE AMOUNT OF \$31,430.00 FOR THE PURCHASE AND INSTALLATION OF SOD FOR TWO NEW SOCCER FIELDS AT THE LEWIS SOCCER COMPLEX

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-32 and authorizes a contract with Nichols Erosion Control, Inc. in the amount of \$31,430.00 for the purchase and installation of sod for two new soccer fields at the Lewis Soccer Complex.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 11-21
02/08/11
2:00 PM
CITY OF FAYETTEVILLE

Bid 11-32, Construction - Installation of Sod for Soccer Field

BIDDER	TYPE OF SOD	PRICE EACH	QTY (SQ FT)	TOTAL PRICE
1 Goodwin & Goodwin, Inc.	Tifway 419	\$0.28	140,000	\$39,200.00
2 GroundServ	Tifway Bermuda	\$0.2642	140,000	\$36,988.00
3 Nichols Erosion Control, Inc.	Bermuda	\$0.2245	140,000	\$31,430.00

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

CERTIFIED: P. VICE
P. VICE, PURCH MGR

Andrew Zuer
WITNESS

2/8/11
DATE



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

REFERENCE BID: 11-32, Construction – Installation of Sod for Soccer Field

Contractor: Nichols Erosion Control, Inc.

Term: Single Project

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and **Nichols Erosion Control, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Nichols Erosion Control, Inc.** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-34 as stated in **Nichols Erosion Control, Inc.** bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-34, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Nichols Erosion Control, Inc.** based on their bid proposal in an amount not to exceed **\$31,430.00.** Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice. Not to exceed price shall include any applicable local, state, and federal taxes as stated in the bid documents.
3. The Contract documents which comprise the contract between the City of Fayetteville and **Nichols Erosion Control, Inc.** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-34 with the specifications and conditions typed thereon.
 - B. **Nichols Erosion Control, Inc.** bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and **Nichols Erosion Control, Inc.** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Nichols Erosion Control, Inc.**
5. **Nichols Erosion Control, Inc.** shall not assign its duties under the terms of this agreement.
6. **Nichols Erosion Control, Inc.** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from **Nichols Erosion Control, Inc.** performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. **Nichols Erosion Control, Inc.** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this

contract is not protected under Worker's Compensation Insurance, **Nichols Erosion Control, Inc.** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.

\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by **Nichols Erosion Control, Inc.**

8. **Nichols Erosion Control, Inc.** to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or **Nichols Erosion Control, Inc.** with 10 days written notice.
10. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo coping costs pursuant to the FOIA may be assessed for this compliance.
11. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

LIONELD JORDAN, Mayor

Attest:

Sondra Smith, City Clerk

Nichols Erosion Control
CONTRACTOR
BY [Signature]
NAME AND TITLE

ATTEST: COMPANY SUPERVISOR

[Signature]

27032 Hwy 144, Smithville, OK. 74957
BUSINESS ADDRESS

City of Fayetteville Staff Review Form

A. 3
 Bid #11-22 Multi-Craft
 Contractors, Inc.
 Page 1 of 20

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning

Division

Sustainability & Strategic Planning

Department

Action Required:

The City of Fayetteville will have 5 contracts after all bidding that will make energy efficient improvements in the areas of HVAC, Roofing, Insulation, Window & Door Replacement, and solar equipment. Using funds from the Energy Block Grant, the City will allocate money to each approved project, based on project needs and/or requirements. The funds will be a loan to the project owner, with proceeds of energy savings returning to the Fund. The bid is based upon mark-up of materials and hourly rate. The HVAC lowest qualified bidder is Multi-Craft (Bid 11-22).

Cost of this request	NTE \$220,000.00/5 contracts	Energy Block Grant
2240.9240.5342.99	Category / Project Budget	Program Category / Project Name
Account Number	\$ 195.00	Energy Block Grant
none	Funds Used to Date	Program / Project Category Name
09011.0020	NTE \$220,000.00/5 contracts	Energy Block Grant
Project Number	Remaining Balance	Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐


 Department Director

Date

4/15/11

Previous Ordinance or Resolution #

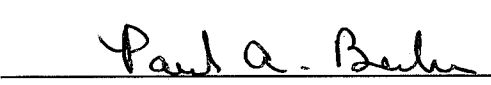
Original Contract Date:

Original Contract Number:


 City Attorney

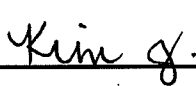
Date

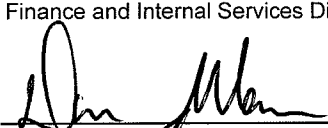
4/19/11


 Finance and Internal Services Director

Date

4-20-2011

Received in City Clerk's Office 04-15-11 P03:10 RCVD



 Chief of Staff

Date

4-20-11

Received in
 Mayor's Office

ENTERED
 4/19/11



 Mayor

Date

4/19/11

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *JC*
Thru: Don Marr, Chief of Staff
DATE: April 11, 2011
SUBJECT: Bid 11-22, HVAC & Repair Services

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve one of five contracts, Bid 11-22 for Heating, Ventilation & Air Conditioning Services not to exceed a total cost of \$62,237 without further approval from City Council. The bid was evaluated based upon mark-up of materials and hourly rates. The contract is for one year with four automatic annual renewal options. Multi-Craft was the lowest responsive, responsible bidder and is recommended for award.

Budget Impact

Contract costs will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009. Combined, Bids 11-22, 11-23, 11-25, 11-33, and 11-34 will not exceed \$220,000 without further approval from the City Council.

Other City Departments are allowed to utilize these annual contracts, but will be required to follow standard procurement procedures.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-22 AND AUTHORIZING A CONTRACT WITH MULTI-CRAFT CONTRACTORS, INC. IN AN AMOUNT NOT TO EXCEED \$62,237.00 FOR HVAC AND REPAIR SERVICES RELATED TO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDED COMMUNITY REVOLVING LOAN FUND PROJECTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-22 and authorizes a contract with Multi-Craft Contractors, Inc. in an amount not to exceed \$62,237.00 for HVAC and repair services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



Bid 11-22, HVAC Installation and Repair Services

 BID: 11-22
 DATE: 03/22/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Name of Contractor:			Carrier Corporation				Multi-Craft Contractors, Inc.			
SECTION A: Materials Subject to Buy American Requirements			A	B	C (A x B)	D (B + C)	A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost	
1	General Material (Cost plus %) \$0-\$100	100%	\$1,500	\$1,500	\$3,000.00	30%	\$1,500	\$450.00	\$1,950.00	
2	General Material (Cost plus %) \$101-\$500	75%	\$3,000	\$2,250	\$5,250.00	25%	\$3,000	\$750.00	\$3,750.00	
3	General Material (Cost plus %) \$501-\$1000	50%	\$1,500	\$750	\$2,250.00	15%	\$1,500	\$225.00	\$1,725.00	
4	General Material (Cost plus %) \$1001-and up	33%	\$1,500	\$495	\$1,995.00	15%	\$1,500	\$225.00	\$1,725.00	
5	Purchases of New Units	25%	\$30,000	\$7,500	\$37,500.00	15%	\$30,000	\$4,500.00	\$34,500.00	
6	Rental Equipment (Cost plus %)	25%	\$1,500	\$375	\$1,875.00	10%	\$1,500	\$150.00	\$1,650.00	
Estimated Cost for Section A (Sum of Items 1-6):			\$51,870.00						\$45,300.00	
SECTION B: Labor Subject to Davis-Bacon Wage Rates			A	B	C (A x B)	A	B	C (A x B)		
Item	Description	Estimated hours	Hourly Rate		Estimated Labor Cost	Estimated hours	Hourly Rate		Estimated Labor Cost	
7	HVAC - Rate 1 (Fabricator/Installer)	140	\$85.50		\$11,970.00	140	\$50.00		\$7,000.00	
8	HVAC - Rate 2 (Installer/Mechanic)	140	\$85.50		\$11,970.00	140	\$50.00		\$7,000.00	
9	HVAC - Rate 3 (Installer/Technician)	42	\$85.50		\$3,591.00	42	\$65.00		\$2,730.00	
10	HVAC - Rate 4 (Commissioning Agent)	3	\$99.00		\$297.00	3	\$69.00		\$207.00	
Estimated Cost for Section B (Sum of Items 7-10):			\$27,828.00						\$16,937.00	
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)			\$79,698.00						\$62,237.00	

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

03/22/11



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

CONTRACT

REFERENCE BID: 11-22, HVAC Installation & Repair Services

Contractor: Multi-Craft Contractors, Inc.

Term: 1 year with 4 automatic renewal options

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and **Multi-Craft Contractors, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Multi-Craft Contractors, Inc.** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per **Bid 11-22** as stated in **Multi-Craft Contractors, Inc.** bid proposal, and in accordance with specifications attached hereto and made a part hereof under **Bid 11-22**, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Multi-Craft Contractors, Inc.** based on their bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Multi-Craft Contractors, Inc.** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. No work shall be started on any project for any location with out the receipt of a City issued Purchase Order (PO). All work performed by **Multi-Craft Contractors, Inc.** without a PO is at the risk of **Multi-Craft Contractors, Inc.**
4. The Contract documents which comprise this contract between the City of Fayetteville and **Multi-Craft Contractors, Inc.** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to **Bid 11-22** with the specifications and conditions typed thereon.
 - B. **Multi-Craft Contractors, Inc.** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Multi-Craft Contractors, Inc.** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Multi-Craft Contractors, Inc.**
6. **Multi-Craft Contractors, Inc.** shall not assign its duties under the terms of this agreement.
7. **Multi-Craft Contractors, Inc.** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. **Multi-Craft Contractors, Inc.** agrees to abide by the following **American Recovery and Reinvestment Act (ARRA) Provisions** at all times and fully provide efforts to assist the City with compliance.

- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
 - i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
- b. **Waste Stream** – **Multi-Craft Contractors, Inc.** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. **Multi-Craft Contractors, Inc.** shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. **Multi-Craft Contractors, Inc.** shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
- c. **Davis-Bacon Wage Rates** - **Multi-Craft Contractors, Inc.** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. **Multi-Craft Contractors, Inc.** shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.

9. **Multi-Craft Contractors, Inc.** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Multi-Craft Contractors, Inc.** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General & Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.
 \$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by **Multi-Craft Contractors, Inc.**

10. **Multi-Craft Contractors, Inc.** to furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated by the City of Fayetteville or **Multi-Craft Contractors, Inc.** with 10 days written notice.
12. **Freedom of Information Act:** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

LIONELD JORDAN, Mayor

Attest: Sondra Smith, City Clerk

Dennis Kelly
CONTRACTOR
BY DENNIS KELLY, V.P.
NAME AND TITLE

ATTEST: COMPANY SECRETARY

P.O. BOX 1760 SPRINGDALE AR
BUSINESS ADDRESS 72765-1760



BID: 11-22
 DATE: 03/22/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 11-22, HVAC Installation and Repair Services

Name of Contractor:		Carrier Corporation				Multi-Craft Contractors, Inc.			
SECTION A: Materials		A	B	C (A x B)	D (B + C)	A	B	C (A x B)	D (B + C)
Subject to Buy American Requirements									
Item	Description	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	100%	\$1,500	\$1,500	\$3,000.00	30%	\$1,500	\$450.00	\$1,950.00
2	General Material (Cost plus %) \$101-\$500	75%	\$3,000	\$2,250	\$5,250.00	25%	\$3,000	\$750.00	\$3,750.00
3	General Material (Cost plus %) \$501-\$1000	50%	\$1,500	\$750	\$2,250.00	15%	\$1,500	\$225.00	\$1,725.00
4	General Material (Cost plus %) \$1001-and up	33%	\$1,500	\$495	\$1,995.00	15%	\$1,500	\$225.00	\$1,725.00
5	Purchases of New Units	25%	\$30,000	\$7,500	\$37,500.00	15%	\$30,000	\$4,500.00	\$34,500.00
6	Rental Equipment (Cost plus %)	25%	\$1,500	\$375	\$1,875.00	10%	\$1,500	\$150.00	\$1,650.00
Estimated Cost for Section A (Sum of Items 1-6):					\$51,870.00				\$45,300.00
SECTION B: Labor		A	B	C (A x B)		A	B	C (A x B)	
Subject to Davis-Bacon Wage Rates									
Item	Description	Estimated hours	Hourly Rate	Estimated Labor Cost		Estimated hours	Hourly Rate	Estimated Labor Cost	
7	HVAC - Rate 1 (Fabricator/Installer)	140	\$85.50	\$11,970.00		140	\$50.00	\$7,000.00	
8	HVAC - Rate 2 (Installer/Mechanic)	140	\$85.50	\$11,970.00		140	\$50.00	\$7,000.00	
9	HVAC - Rate 3 (Installer/Technician)	42	\$85.50	\$3,591.00		42	\$65.00	\$2,730.00	
10	HVAC - Rate 4 (Commissioning Agent)	3	\$99.00	\$297.00		3	\$69.00	\$207.00	
Estimated Cost for Section B (Sum of Items 7-10):				\$27,828.00				\$16,937.00	
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)				\$79,698.00				\$62,237.00	

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

03/22/11

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: Multi-Craft Contractors, Inc.

Purchase Order and /Payments shall be issued to this name

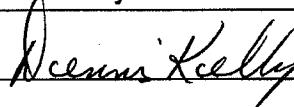
*BUSINESS ADDRESS: P.O. Box 1760

*CITY: Springdale *STATE: AR *ZIP: 72765-1760

*PHONE: 479-751-4330 FAX: 479-751-4399

*E-MAIL: info@multi-craft.net

*BY: (PRINTED NAME) Dennis Kelly

*AUTHORIZED SIGNATURE: 

*TITLE: Vice President

*DATE: March / 22 / 2011

Acknowledge Addendums:

Addendum No. 1 Dated: 03/04/11 Acknowledged by: Dennis Kelly

Addendum No. 2 Dated: 03/11/11 Acknowledged by: Dennis Kelly

Addendum No. 3 Dated: 03/17/11 Acknowledged by: Dennis Kelly

Addendum No. Dated: Acknowledged by:

City of Fayetteville
 Bid 11-22, HVAC Installation & Repair Services
 Bid Pricing Form – REVISED PER ADDEDNUM 1

BID 11-22, ADDENDUM 1 - REVISED BID FORM						
SECTION A: Materials Subject to Buy American Requirements			A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %		Contractors Material Cost Estimate	\$ Amount of Mark Up	\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	30 %	x	\$1,500	= \$450.00	\$ 1,950.00
2	General Material (Cost plus %) \$101-\$500	25 %	x	\$3,000	= \$750.00	\$ 3,750.00
3	General Material (Cost plus %) \$501-\$1000	15 %	x	\$1,500	= \$225.00	\$1,725.00
4	General Material (Cost plus %) \$1001-and up	15 %	x	\$1,500	= \$225.00	\$1,725.00
5	Purchases of New Units	15 %	x	\$30,000	= \$4,500.00	\$34,500.00
6	Rental Equipment (Cost plus %)	10 %	x	\$1,500	= \$150.00	\$1,650.00
Estimated Cost for Section A (Sum of Items 1-6):						\$ 45,300.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates			A	B	C (A x B)	
Item	Description: Most basic trade is listed as "Rate 1". Skill set increases with increased rate number.	Estimated hours subject to change		Hourly Rate		Estimated Labor Cost
7	HVAC - Rate 1 (Fabricator/Installer)	140	x	\$ 50.00	=	\$ 7,000.00
8	HVAC - Rate 2 (Installer/Mechanic)	140	x	\$ 50.00	=	\$ 7,000.00
9	HVAC - Rate 3 (Installer/Technician)	42	x	\$ 65.00	=	\$ 2,730.00
10	HVAC - Rate 4 (Commissioning Agent)	3	x	\$ 69.00	=	\$ 207.00
Estimated Cost for Section B (Sum of Items 7-10):						\$16,937.00
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)						\$ \$62,237.00
**Bid bond required on 5% of "Total Estimated Cost for Items 1-10". A 100% Performance and Payment bond is required for same within ten days after notice of contract award.						
Name of Contractor: <u>Multi-Craft Contractors, Inc.</u>						

City of Fayetteville
Bid 11-22, HVAC Installation & Repair Services
Bid Proposal Form (shall be submitted with all bids)

This page becomes an integral part of the proposal submitted

by Multi-Craft Contractors, Inc.
(Vendor/Company Name)

The undersigned proposes to furnish and deliver, in accordance with the requirements of these bid documents issued February of 2011, prepared by the City of Fayetteville, Purchasing Division, **for the time period beginning date of Bid Award and ending twelve months thereafter as per Bid 11-22, subject to four one (1) year annual renewals.** Item numbers below refer to the same numbered paragraph of the Instructions to Bidders and the Specifications.

INSTRUCTIONS TO BIDDERS:

1.1. Prices shall include all labor, supervision, materials, equipment, transportation and services necessary to do a top quality job. YES X NO

1.2. Discounts offered: none

1.3. Condition of Bid FIRM? YES X NO
SUBJECT TO ESCALATION No
Method of Escalation, if applicable.....
BIDS MUST BE FIRM FOR ACCEPTANCE FOR 90 Days
Bid is Firm X Days Weeks

1.4. Bidder will accept total bid only? YES X NO
(or any portion of bid award) YES X NO

1.5. Bidder has submitted an original bid document? YES X NO

1.6. Bidder will provide Workman's Compensation Insurance as outlined? YES X NO

1.7. Bidder will provide General Liability Insurance as outlined? YES X NO

1.8. Bidder will provide Automobile Coverage as outlined? YES X NO

1.9. Bidder will indemnify the City of Fayetteville? YES X NO

2.0. Bidder has included qualification & experience information as required? YES X NO

3.0 PURCHASES BY OTHER PUBLIC AGENCIES:

Bidder agrees to extend pricing, terms, and conditions to other public agencies

YES NO XX

4.0 RESPONSE TIME

Bidder agrees to have a person on call for emergencies twenty four hours a day?

YES ☒ NO ☐

Bidder agrees to four (4) hour emergency response time for City related calls?

YES ☒ NO ☐

Bidder agrees to two to three day response time for regular calls unless an extension is approved by City project manager?

YES ☒ NO ☐

5.0 DAVIS-BACON PREVAILING WAGE DETERMINATION

Bidder agrees meet all wage requirements as outlined and required, including but not limited to certified payroll reporting?

YES ☒ NO ☐

6.0 BUY AMERICAN

Bidder agrees follow all Buy American requirements?

YES ☒ NO ☐

7.0 PROFESSIONAL STANDARDS

Bidder agrees to have professional workmanship and perform work in a manner consistent with the industry in which it is related to?

YES ☒ NO ☐

BIDDER ACKNOWLEDGES RECEIPT OF ADDENDA:

ADDENDUM NO. 1 DATED 03/04/2011

ADDENDUM NO. 2 DATED 03/11/2011

ADDENDUM NO. 3 DATED 03/17/2011

This page becomes an integral part of the proposal submitted

by Multi-Craft Contractors, Inc.

(Vendor/Company Name)

We propose to furnish the equipment/material as indicated in this Bid Blank, provided to the City of Fayetteville with transportation charges prepaid, and for the price quoted below. All equipment/material to be furnished in accordance with City of Fayetteville specifications attached hereto.

City of Fayetteville
Bid 11-22, HVAC Installation & Repair Services
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: Multi-Craft Contractors, Inc.

BUSINESS ADDRESS: P.O. Box 1760, Springdale AR 72765-1760

NUMBER OF YEARS IN BUSINESS: 39 HOW LONG IN PRESENT LOCATION: 24

TOTAL NUMBER OF CURRENT EMPLOYEES: 345 FULL TIME 4 PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: TBD FULL TIME PART TIME
by each individual project

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY
PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be
completed):

1. Rockline Industries

COMPANY NAME

1583 E. Mountain Rd., Springdale AR 72764

CITY, STATE, ZIP

Mike Gray

CONTACT PERSON

479-756-9251

TELEPHONE

479-927-4388

FAX NUMBER

megray@rocklineind.com

E-MAIL ADDRESS

2. Washington County Administration

COMPANY NAME

280 N. College, Fayetteville AR 72701

CITY, STATE, ZIP

Ron Wood

CONTACT PERSON

479-466-2817

TELEPHONE

479-444-1648

FAX NUMBER

unknown

E-MAIL ADDRESS

3. Central United Methodist Church

COMPANY NAME

P.O. Box 1106, Fayetteville AR 72702

CITY, STATE, ZIP

Billy Jones

CONTACT PERSON

479-442-4237

TELEPHONE

479442-4258

FAX NUMBER

bjones@centraltolife.com

E-MAIL ADDRESS

4. Preformed Line Products

COMPANY NAME

2740 S. 1st Street, Rogers AR 72758

CITY, STATE, ZIP

Dale Hoofard

CONTACT PERSON

479-636-7600

TELEPHONE

479-636-0769

FAX NUMBER

dhoofard@preformed.com

E-MAIL ADDRESS

City of Fayetteville
Bid 11-22, HVAC Installation & Repair Services
Debarment Certification Form – **THIS FORM SHALL BE SUBMITTED WITH ALL BIDS**

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: Dennis Kelly

COMPANY: Multi-Craft Contractors, Inc.

PHYSICAL ADDRESS: 2300 Lowell Road, Springdale AR 72764

MAILING ADDRESS: P.O. Box 1760, Springdale AR 72765-1760

PHONE: 479-751-4330 FAX: 479-751-4399

EMAIL: dlk@multi-craft.net

SIGNATURE: Dennis Kelly

DATE: March 22, 2011

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing

City of Fayetteville
Bid 11-22, HVAC Installation & Repair Services
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

 X 1.) NO KNOWN RELATIONSHIP EXISTS

 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Dennis Kelly

Printed Name

Dennis Kelly
Signature

March 22, 2011

Date

BID BOND **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**
Hartford, Connecticut 06183

KNOWN ALL BY THESE PRESENTS, That we, Multi-Craft Contractors, Inc., as Principal, and Travelers Casualty and Surety Company of America, as Surety, are held and firmly bound unto City of Fayetteville, Arkansas, as Obligee, in the sum of Five Percent Dollars (\$5%) for the payment of which we bind ourselves, and our successors and assigns, jointly and severally, as provided herein.

WHEREAS, Principal has submitted or is about to submit a bid to the Obligee on a contract for Bid 11-22, HVAC Installation and Repair Services ("Project").

NOW, THEREFORE, the condition of this bond is that if Obligee accepts Principal's bid, and Principal enters into a contract with Obligee in conformance with the terms of the bid and provides such bond or bonds as may be specified in the bidding or contract documents, then this obligation shall be void; otherwise Principal and Surety will pay to Obligee the difference between the amount of Principal's bid and the amount for which Obligee shall in good faith contract with another person or entity to perform the work covered by Principal's bid, but in no event shall Surety's and Principal's liability exceed the penal sum of this bond.

Signed this 17th day of March, 2011.

Multi-Craft Contractors, Inc.
(Principal)

By: *Dennis Kelly*

Travelers Casualty and Surety Company of America

By: *Marilyn White*
Marilyn White, Attorney-in-Fact

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 217535

Certificate No. 001069538

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Danna Carol Freeman, Darby Barton, Bill Brookshire, Warren T. Baldwin Jr., and Marilyn White

of the City of Fayetteville, State of Arkansas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 7th day of August, 2006

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: George W. Thompson

George W. Thompson, Senior Vice President

On this the 7th day of August, 2006, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 17th day of March, 20 11.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.stpaultravelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



Project Check List

Bid 11-22, HVAC Installation and Repair Services

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.

- ☒ 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)
 - In lieu of a bid bond, the bidder may submit a cashier's check for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.
- ☒ All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).
- ☒ All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.
- ☒ All bidders shall submit the following forms with each bid: Bid Pricing Form, Bid Proposal Form, Vendor References, Debarment Certification Form, & Statement of Disclosure.
- ☒ All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents
- ☒ All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: Multi-Craft Contractors, Inc.

ARKANSAS CONTRACTORS LICENSE NUMBER: 0025810311

City of Fayetteville Staff Review Form

A. 4
 Bid #11-23 Schefers Roofing
 Page 1 of 24

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning
 Division

Sustainability & Strategic Planning
 Department

Action Required:

The City of Fayetteville will have 5 contracts after all bidding that will make energy efficient improvements in the areas of HVAC, Roofing, Insulation, Window & Door Replacement, and solar equipment. Using funds from the Energy Block Grant, the City will allocate money to each approved project, based on project needs and/or requirements. The funds will be a loan to the project owner, with proceeds of energy savings returning to the Fund. The bid is based upon mark-up of materials and hourly rate. The Roofing lowest qualified bidder is Schefers Roofing (Bid 11-23).

Cost of this request	NTE \$220,000.00/5 contracts Category / Project Budget	Energy Block Grant Program Category / Project Name
2240.9240.5342.99	\$ 195.00	Energy Block Grant
Account Number	Funds Used to Date	Program / Project Category Name
none		
09011.0020	NTE \$220,000.00/5 contracts	Energy Block Grant
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐


 Department Director

4/15/11
 Date

Previous Ordinance or Resolution # _____


 City Attorney

4/19/11
 Date

Original Contract Date: _____

Original Contract Number: _____


 Finance and Internal Services Director

4-20-2011
 Date

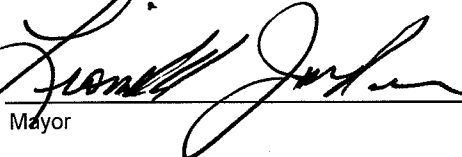
Received in City Clerk's Office 04-15-11 P03:10 RCVD


 Chief of Staff

4-20-11
 Date

Received in Mayor's Office

ENTERED
 4/19/11



 Mayor

4/19/11
 Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *JC*
Thru: Don Marr, Chief of Staff
DATE: April 11, 2011
SUBJECT: Bid 11-23, Roofing Repairs & Upgrades

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve Bid 11-23 for Roofing Repairs & Upgrades not to exceed a total cost of \$60,554.40 without further approval from City Council. The bid was evaluated based upon mark-up of materials and hourly rates. The contract is for one year with four automatic annual renewal options. Schefers Roofing is the only bidder and is recommended for award.

Budget Impact

Contract costs will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009. Combined, Bids 11-22, 11-23, 11-25, 11-33, and 11-34 will not exceed \$220,000 without further approval from the City Council.

Other City Departments are allowed to utilize these annual contracts, but will be required to follow standard procurement procedures.

A. 4
 Bid #11-23 Schefers Roofing
 Page 3 of 24



BID: 11-23
 DATE: 03/22/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 11-23, Roofing Repairs and Upgrades

Name of Contractor:		Schefers Roofing			
SECTION A: Materials Subject to Buy American Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	45%	x \$1,500	= \$675	\$2,175.00
2	General Material (Cost plus %) \$101-\$500	35%	x \$1,500	= \$525	\$2,025.00
3	General Material (Cost plus %) \$501-\$1000	35%	x \$1,500	= \$525	\$2,025.00
4	General Material (Cost plus %) \$1001-and up	35%	x \$1,500	= \$525	\$2,025.00
5	Reflective Paint Material	35%	x \$2,000	= \$700	\$2,700.00
6	New Reflective Roof Material - Standing Seam Metal Roof	35%	x \$30,000	= \$10,500	\$40,500.00
Estimated Cost for Section A (Sum of Items 1-6):					\$51,450.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B	C (A x B)	
Item	Description	Estimated hours	Hourly Rate	Estimated Labor Cost	
7	Roofing - Rate 1 (Application/Installer)	100	x \$38.55	=	\$3,855.00
8	Roofing - Rate 2 (Installer/Foreman)	100	x \$45.00	=	\$4,500.00
9	Roofing - Rate 3 (Foreman/Supervisor)	8	x \$53.55	=	\$428.40
10	Roofing - Rate 4 (Supervisor/Inspector)	3	x \$107.00	=	\$321.00
Estimated Cost for Section B (Sum of Items 7-10):					\$9,104.40
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)					\$60,554.40

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

P. Vice

John Coleman

03/22/11

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-23 AND AUTHORIZING A CONTRACT WITH SCHEFERS ROOFING IN AN AMOUNT NOT TO EXCEED \$60,554.40 FOR ROOFING REPAIRS AND UPGRADES RELATED TO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDED COMMUNITY REVOLVING LOAN FUND PROJECTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-23 and authorizes a contract with Schefers Roofing in an amount not to exceed \$60,554.40 for roofing repairs and upgrades related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CONTRACT

REFERENCE BID: 11-23, Roofing Repairs and Upgrades

Contractor: Schefers Roofing Company

Term: 1 year with 4 automatic renewal options

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and **Schefers Roofing Company**. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Schefers Roofing Company** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per **Bid 11-23** as stated in **Schefers Roofing Company** bid proposal, and in accordance with specifications attached hereto and made a part hereof under **Bid 11-23**, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Schefers Roofing Company** based on their bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Schefers Roofing Company** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. No work shall be started on any project for any location with out the receipt of a City issued Purchase Order (PO). All work performed by **Schefers Roofing Company** without a PO is at the risk of **Schefers Roofing Company**.
4. The Contract documents which comprise this contract between the City of Fayetteville and **Schefers Roofing Company** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to **Bid 11-23** with the specifications and conditions typed thereon.
 - B. **Schefers Roofing Company** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Schefers Roofing Company** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Schefers Roofing Company**.
6. **Schefers Roofing Company** shall not assign its duties under the terms of this agreement.
7. **Schefers Roofing Company** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

A. 4
Page 6 of 24

8. **Schefers Roofing Company** agrees to abide by the following **American Recovery and Reinvestment Act (ARRA) Provisions** at all times and fully provide efforts to assist the City with compliance.

- a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:
- i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
 - iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.
- b. **Waste Stream** – **Schefers Roofing Company** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. **Schefers Roofing Company** shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. **Schefers Roofing Company** shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).
- c. **Davis-Bacon Wage Rates** - **Schefers Roofing Company** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. **Schefers Roofing Company** shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.

9. **Schefers Roofing Company** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Schefers Roofing Company** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General & Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.
\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

10. Schefers Roofing Company to furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated by the City of Fayetteville or Schefers Roofing Company with 10 days written notice.
12. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

LIONELD JORDAN, Mayor

Attest: Sondra Smith, City Clerk

Schefers Roofing Company
CONTRACTOR
BY [Signature]
NAME AND TITLE

ATTEST: COMPANY SECRETARY

[Signature]

PO Box 326, Green Valley, MO
BUSINESS ADDRESS 64029



BID: 11-23
 DATE: 03/22/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 11-23, Roofing Repairs and Upgrades

Name of Contractor:		Schefers Roofing					
SECTION A: Materials Subject to Buy American Requirements		A		B		C (A x B)	D (B + C)
Item	Description	Mark Up %		Contractors Material Cost Estimate		\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	45%	x	\$1,500	=	\$675	\$2,175.00
2	General Material (Cost plus %) \$101-\$500	35%	x	\$1,500	=	\$525	\$2,025.00
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Estimated Cost for Section A (Sum of Items 1-6):							\$51,450.00
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**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)							\$60,554.40

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

P. Vice

John Doe

03/22/11

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: SCHEFERS ROOFING
Purchase Order and /Payments shall be issued to this name

*BUSINESS ADDRESS: 13243 PUPPYCREEK RD #13

*CITY: SPRINGDALE *STATE: AR *ZIP: 72762

*PHONE: 479-717-2279 FAX: 479-717-2240

*E-MAIL: JEFFW@SCHEFERS ROOFING.COM

*BY: (PRINTED NAME) JEFF D. WICKER D.M.

*AUTHORIZED SIGNATURE: J.D. WICKER D.M.

*TITLE: PROJECT MANAGER

*DATE: MARCH 12ND 2011

Acknowledge Addendums:

Addendum No. 1 Dated: 3/4/11 Acknowledged by: J.D. WICKER D.M.

Addendum No. 2 Dated: 3/11/11 Acknowledged by: J.D. WICKER D.M.

Addendum No. 3 Dated: 3/17/11 Acknowledged by: J.D. WICKER D.M.

Addendum No. Dated: Acknowledged by:

City of Fayetteville
 Bid 11-23, Roofing Repairs & Upgrades
 Bid Pricing Form – REVISED PER ADDEDNUM 1

BID 11-23, ADDENDUM 1 - REVISED BID FORM					
SECTION A: Materials Subject to Davis-Bacon Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	45 %	\$1,500	= 675.00	\$ 2,175.00
2	General Material (Cost plus %) \$101-\$500	35 %	\$1,500	= 525.00	\$ 2,025.00
3	General Material (Cost plus %) \$501-\$1000	35 %	\$1,500	= 525.00	\$ 2,025.00
4	General Material (Cost plus %) \$1001-and up	35 %	\$1,500	= 525.00	\$ 2,025.00
5	Reflective Paint Material	35 %	\$2,000	= 700.00	\$ 2,700.00
6	New Reflective Roof Material - Standing Seam Metal Roof	35 %	\$30,000	= 10,500.00	\$ 40,500.00
Estimated Cost for Section A (Sum of Items 1-6):					\$ 51,450.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B	C (A x B)	
Item	Description: Most basic trade is listed as "Rate 1". Skill set increases with increased rate number.	Estimated hours subject to change	Hourly Rate	Estimated Labor Cost	
7	Roofing - Rate 1 (Application/Installer)	100	\$ 38.65	= \$ 3,865.00	
8	Roofing - Rate 2 (Installer/Foreman)	100	\$ 45.00	= \$ 4,500.00	
9	Roofing - Rate 3 (Foreman/Supervisor)	8	\$ 53.55	= \$ 428.40	
10	Roofing - Rate 4 (Supervisor/Inspector)	3	\$ 107.00	= \$ 321.00	
Estimated Cost for Section B (Sum of Items 7-10):					9,104.40
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)					\$ 60,554.40
☒ **Bid bond required on 5% of "Total Estimated Cost for Items 1-10". ☒ A 100% Performance and Payment bond is required for same within ten days after notice of contract award.					
Name of Contractor: <u>SCHEFERS ROOFING</u>					

Bid 11-23, Addendum 1 – REVISED BID FORM
 Page 2 of 3

* ANTICIPATED NUMBER OF DAY'S FROM DATE OF RECEIPT OF AN ORDER FOR DELIVERY OF EQUIPMENT AND INSTALLATION TO THE CITY OF FAYETTEVILLE 104 DAY'S

City of Fayetteville
Bid 11-23, Roofing Repairs and Upgrades
Bid Proposal Form (shall be submitted with all bids)

This page becomes an integral part of the proposal submitted

by SCHEFERS ROOFING
(Vendor/Company Name)

The undersigned proposes to furnish and deliver, in accordance with the requirements of these bid documents issued February of 2011, prepared by the City of Fayetteville, Purchasing Division, **for the time period beginning date of Bid Award and ending twelve months thereafter as per Bid 11-23, subject to four one (1) year annual renewals.** Item numbers below refer to the same numbered paragraph of the Instructions to Bidders and the Specifications.

INSTRUCTIONS TO BIDDERS:

1.1. Prices shall include all labor, supervision, materials, equipment, transportation and services necessary to do a top quality job. YES X NO

1.2. Discounts offered:

1.3. Condition of Bid FIRM? YES X NO
SUBJECT TO ESCALATION
Method of Escalation, if applicable
BIDS MUST BE FIRM FOR ACCEPTANCE FOR 90 Days
Bid is Firm 120 Days Weeks

1.4. Bidder will accept total bid only? YES NO X
(or any portion of bid award) YES X NO

1.5. Bidder has submitted an original bid document? YES X NO

1.6. Bidder will provide Workman's Compensation Insurance as outlined? YES X NO

1.7. Bidder will provide General Liability Insurance as outlined? YES X NO

1.8. Bidder will provide Automobile Coverage as outlined? YES X NO

1.9. Bidder will indemnify the City of Fayetteville? YES X NO

2.0. Bidder has included qualification & experience information as required? YES X NO

3.0 PURCHASES BY OTHER PUBLIC AGENCIES:

Bidder agrees to extend pricing, terms, and conditions to other public agencies

YES X NO

4.0 RESPONSE TIME

Bidder agrees to have a person on call for emergencies twenty four hours a day?

YES ☒ NO ☐

Bidder agrees to one (1) hour emergency response time?

YES ☒ NO ☐

Bidder agrees to two to three day response time for regular calls unless an extension is approved by City project manager?

YES ☒ NO ☐

5.0 DAVIS-BACON PREVAILING WAGE DETERMINATION

Bidder agrees meet all wage requirements as outlined and required, including but not limited to certified payroll reporting?

YES ☒ NO ☐

6.0 BUY AMERICAN

Bidder agrees follow all Buy American requirements?

YES ☒ NO ☐

7.0 PROFESSIONAL STANDARDS

Bidder agrees to have professional workmanship and perform work in a manner consistent with the industry in which it is related to?

YES ☒ NO ☐

BIDDER ACKNOWLEDGES RECEIPT OF ADDENDA:

ADDENDUM NO. 1 DATED MARCH 4, 2011

ADDENDUM NO. 2 DATED MARCH 11, 2011

ADDENDUM NO. 3 DATED MARCH 17, 2011

This page becomes an integral part of the proposal submitted

by SCHEFERS ROOFING
(Vendor/Company Name)

We propose to furnish the equipment/material as indicated in this Bid Blank, provided to the City of Fayetteville with transportation charges prepaid, and for the price quoted below. All equipment/material to be furnished in accordance with City of Fayetteville specifications attached hereto.

City of Fayetteville
Bid 11-23, Roofing Repairs and Upgrades
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: SCHEFERS ROOFING

BUSINESS ADDRESS: 13243 PUPPY CREEK ROAD #13

NUMBER OF YEARS IN BUSINESS: 16 HOW LONG IN PRESENT LOCATION: 4 yr.

TOTAL NUMBER OF CURRENT EMPLOYEES: 62 FULL TIME 62 PART TIME 0

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 12 FULL TIME 3 PART TIME

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be completed):

1. UNIVERSITY OF ARKANSAS
COMPANY NAME ASBESTOS ROOFING PROJECTS
521 RAZORBACK ROAD, FAYETTEVILLE AR.
CITY, STATE, ZIP 72703

2. FLINTCO / JOBS
COMPANY NAME UAFS RESIDENCE HALLS & DINING FACILITY
184 E. PATINEL BLVD 5397 KINFORD, FORTSMITH
SPRINGDALE AR. 72762 / AR, 72903
CITY, STATE, ZIP

JOSH LANE (MILESTONE) / JAMES MILNER (UOFA) PATRICK HORATH
CONTACT PERSON

479-409-2390 / 479-575-6183
TELEPHONE

479-751-4841 / 479-575-4859
FAX NUMBER

JLANE@MILESTONE.com / JMILNER@UPK.EDU
E-MAIL ADDRESS

479-879-3371 - 479-750-4565
TELEPHONE

479-750-4690
FAX NUMBER

PHORATH@FLINTCO.COM
E-MAIL ADDRESS

3. KRAFT FOODS
COMPANY NAME

507 SOUTHEAST E STREET
CITY, STATE, ZIP BENTONVILLE, AR 72712

JIM BASS
CONTACT PERSON

479-273-5561 xt. 125 / 479-200-5709
TELEPHONE

479-273-2433
FAX NUMBER

JIMMY.BASS@KRAFT.COM
E-MAIL ADDRESS

4. VOC PROPERTIES
COMPANY NAME

5308 VILLAGE PARKWAY STE #2
CITY, STATE, ZIP ROGERS, AR. 72750

GABE MORRIS
CONTACT PERSON

479-464-4292 / 479-644-7279
TELEPHONE

479-464-4282
FAX NUMBER

GABE@VILLAGEONTHECREEKS.COM
E-MAIL ADDRESS

* PROJECTS SHOWN ARE PROVIDED TO
SHOW THE DIVERSITY OF OUR WORK
CAPABILITIES. MORE PROJECT INFO IS
AVAILABLE UPON REQUEST.

City of Fayetteville
Bid 11-23, Roofing Repairs and Upgrades
Debarment Certification Form – **THIS FORM SHALL BE SUBMITTED WITH ALL BIDS**

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: JEFF D. WICKER P.M.

COMPANY: SCHEFERS ROOFING COMPANY

PHYSICAL ADDRESS: 13243 POPPY CREEK RD #13 SPRINGDALE AR. 72762 ^{CORPORATE: 116 E. AA HWY.} GRAIN VALLEY, MO 64029

MAILING ADDRESS: P.O. BOX 701 BENTONVILLE, AR 72712 P.O. BOX 326 GRAIN VALLEY, MO.

PHONE: 479-717-2279/816-847-1002 FAX: 479-717-2240/816-847-7216 ⁶⁴⁰²⁹

EMAIL: JEFF W @ SCHEFERS ROOFING.COM

SIGNATURE: J. D. WICKER P.M.

DATE: 3/18/11

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.

City of Fayetteville
Bid 11-23, Roofing Repairs and Upgrades
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

☒ 1.) NO KNOWN RELATIONSHIP EXISTS

☐ 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

JEFF D. WICKER P.M.
Printed Name

[Signature] P.M.
Signature

3/18/11
Date

THE AMERICAN INSTITUTE OF ARCHITECTS

A. 4
Bid #11-23 Schefers Roofing
Page 16 of 24

AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE Schefers Roofing Company

P.O. Box 326, Grain Valley, MO 64029

as Principal, hereinafter called the Principal, and Merchants Bonding Company (Mutual)

2100 Fleur Drive, Des Moines, IA 50321-1158

a corporation duly organized under the laws of the State of IA

as Surety, hereinafter called the Surety, are held and firmly bound unto City of Fayetteville

113 W. Mountain, Fayetteville, AR 72701

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid

Dollars (\$ 5%),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Reroof of Chamber of Commerce & 3 Mount Sequoyah Locations,
Curb Work at Botanical Gardens.

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 18th day of March, 2011

Peggy Messer
(Witness)

Schefers Roofing Company

(Principal) (Seal)
By: [Signature] President
(Title)

[Signature]
(Witness)

Merchants Bonding Company (Mutual)

(Surety) (Seal)
By: [Signature] Kelly R. Watson
Attorney in Fact (Title)

MERCHANTS

BONDING COMPANY

POWER OF ATTORNEY

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

George R. Donnelly, Mark S. Nauser, Kelly R. Watson, Steven L. Nicholson
Erle D. Benton, Chandler H. Cullor

of Overland Park and State of Kansas its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

SEVEN MILLION (\$7,000,000.00) DOLLARS

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on November 16, 2002.

ARTICLE II, SECTION 8 - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9 - The signature of any authorized officer and the Seal of the Company may be affixed by facsimile to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 27th day of May, 2009.



MERCHANTS BONDING COMPANY (MUTUAL)

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 27th day of May, 2009, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Cindy Smyth
Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Company on this 18TH day of MARCH, 2011.



William Warner Jr.
Secretary

POA 0001 (1/09)



Kynar 500® or Hylar 5000™ Limited Warranty

MATERIAL DESCRIPTION:

JOB NAME:

SOLD TO:

INVOICE NUMBER(S):

OWNER:

EFFECTIVE DATE:

DATE OF ISSUE:

Berridge Manufacturing Company warrants that Kynar 500® or Hylar 5000™ 70% full-strength Fluoropolymer finish will perform for twenty (20) years from date of installation as an effective surfacing material within the scope of the conditions and limitations defined in this warranty document.

EFFECTIVE SURFACING MATERIAL IS DEFINED TO MEAN:

1. Freedom from cracking, chipping or peeling due to the deterioration of the finish for a period of twenty (20) years from date of purchase, exclusive of mechanical damage or other abnormal contingencies. (See Para 2).
2. Freedom from any color changes in excess of 5 NBS Units (Using the NBS unit of color notation as measured on the MEECO Colormaster: ASTM-D-2244) for a period of twenty (20) years from date of purchase.
3. Freedom from chalking in excess of Number 8 Rating (ASTM-D-659-80) for a period of twenty (20) years from date of installation.

TERMS AND CONDITIONS OF WARRANTY:

1. Berridge shall not have any obligation under this Warranty until all invoices for installation, supplies and services have been paid in full to Berridge and to the Roofer.
2. **BERRIDGE HAS NO OBLIGATION NOR RESPONSIBILITY FOR DAMAGE TO FINISH OR MATERIALS CAUSED BY THE FOLLOWING CONDITIONS:**
 - A. Materials installed in corrosive or aggressive environments including, but not limited to, areas subject to marine conditions, salt water, salt water spray, chemicals, or harmful gases with the exception of normal air pollution.
 - B. Acts of God, falling objects, fire or external forces.
 - C. Abnormal or harmful gases, fumes or chemicals other than general air pollution.
 - D. Physical damage after installation, intentional or unintentional, whether caused by abuse, misuse, negligence, vandalism, or excessive foot traffic on roof area.
 - E. Any act or acts which damages finish after installation of materials on project.
 - F. Physical damage caused during the forming process due to machinery or roll forming process used.
 - G. Slopes of the roof or sections with a pitch of less than one in twenty-four or otherwise as to allow puddling or staining.
 - H. Deterioration of finish or materials due to improper storage prior to or during installation process.
 - I. Deterioration of the finish or substrate caused by standing water or condensation.
 - J. Discoloration or damage to panel finish caused by failure to remove factory-applied protective strippable plastic film.

3. **CUSTOMER MUST NOTIFY BERRIDGE MANUFACTURING COMPANY IN WRITING WITHIN THIRTY (30) DAYS FROM DISCOVERY OF THE CONDITION WHICH IS THE BASIS OF ANY CLAIM AND ALLOW AN INSPECTION OF THE MATERIALS DURING NORMAL BUSINESS HOURS.**

4. **BERRIDGE MANUFACTURING COMPANY'S OBLIGATION WITH RESPECT TO THIS WARRANTY IS LIMITED AS FOLLOWS:**

- A. In the event of a valid claim, Berridge Manufacturing Company shall, at its option: a.) assume the reasonable costs to restore the finish on the materials; b.) furnish replacement materials; or c.) refund the original purchase price paid to Berridge for the materials less five percent (5%) for each year which has lapsed since the date of purchase of the materials.
 - B. Berridge Manufacturing Company's maximum liability for any claim under this Limited Warranty will be the lesser of the three amounts calculated pursuant to a, b, or c of paragraph 4A above.
 - C. It will be at the sole discretion of Berridge Manufacturing Company to determine which action will be taken with respect to any claim under this Limited Warranty.
 - D. In no event shall Berridge Manufacturing Company's liability exceed the lesser of the cost of replacing or restoring the defective panels.
 - E. The warranty on any repaired or replaced product shall be for the remainder of the warranty period applicable to the original purchase.
 - F. **EXCEPT AS SET FORTH HEREIN, BERRIDGE MANUFACTURING COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND HEREBY EXPRESSLY DENIES THE SAME.**
5. This warranty is tendered for the sole benefit of the original owner of the project named herein and is not transferable or assignable.
 6. Berridge's only liability and responsibility is to the terms and conditions of this Warranty. This Warranty supersedes and is in lieu of any and all other warranties (whether express or implied) that are either in addition to or in conflict with the term(s) and condition(s) stated herein.
 7. In the event a court of competent jurisdiction rules that any portion of this Limited Warranty is unenforceable, the remainder of this Limited Warranty shall be construed and enforced as if the stricken portion was not a part hereof originally.

BERRIDGE MANUFACTURING COMPANY | 6515 Fratt Road, San Antonio, TX 78218 | P: (210) 650-3050 | F: (210) 650-0379



Prepainted GALVALUME® Sheet 20-Year, 6-Month Limited Warranty

Material Description:

Job Name:

Sold To:

Invoice Number(s):

Effective Date:

Owner:

Date of Issue:

EXCLUSIVE WARRANTY

Berridge Manufacturing Company 6515 Fratt Road, San Antonio, Texas 78218 hereby provides this LIMITED WARRANTY TO: ("Customer"). Berridge Manufacturing Company exclusively warrants that, subject to the following provisions, Berridge Manufacturing Company's hot dipped aluminum-zinc alloy-coated GALVALUME® sheet steel, with a coating weight of AZ55 sold for use as prepainted steel building, roofing and siding panels, if erected within the Continental United States as follows:

1. The GALVALUME® sheet steel itself WILL NOT rupture, fail structurally or perforate within a period of 20 years and 6 months after shipment from the coil paint line as a result of corrosion caused by exposure to normal atmospheric conditions.

EXCLUDED ATMOSPHERIC CONDITIONS

This limited warranty DOES NOT APPLY to sheet exposed at any time to corrosive or aggressive atmospheric conditions, including but not limited to:

1. Areas subject to saltwater marine atmospheres or to constant spraying of either salt or fresh water.
2. Areas subject to fallout or exposure to corrosive chemicals, fumes, ash, cement dust or animal waste.
3. Areas subject to water runoff from lead or copper flashings or areas in metallic contact with lead or copper.
4. Conditions/circumstances where corrosive fumes or condensates are generated or released inside the building.

OTHER EXCLUDED SITUATIONS

This limited warranty DOES NOT APPLY in the event of:

- A. Bends less than 4T for all sheet thickness.
 - B. Slopes of the roof or sections of the roof flatter than 1:15. NOTE: This slope is greater than the slope for unpainted coated steel sheet based on the anticipated greater hazard associated with the performance of painted surfaces under conditions of poor drainage.
 - C. Mechanical, chemical or other damage sustained during shipment, storage, forming fabrication or during or after erection.
 - D. Forming which incorporates severe reverse bending or which subjects coating to alternate compression and tension.
 - E. Failure to Provide free drainage of water, including internal condensation, from overlaps on all other surfaces of the sheets or panels.
 - F. Failure to remove debris from overlaps and all other surfaces of the sheets or panels
 - G. Damage caused to the metallic coating by improper roll forming, scouring or cleaning procedures
 - H. Deterioration of the panels caused by contact with green or wet lumber or wet storage stain caused by water damage or condensation.
1. Presence of damp insulation or other corrosive materials in contact with or close proximity to the panel.
 - J. This warranty does not apply in the event of deterioration to the panels caused directly or indirectly by panel contact with fasteners. Selection of suitable long lasting fasteners to be used with GALVALUME® sheet roofing and siding panels rests solely with the Customer.

EXCLUSIVE REMEDIES

Customer's exclusive remedy and Berridge Manufacturing Company's sole liability for breach of this limited warranty shall be limited exclusively to the cost of either repairing non-conforming panels, or at Berridge Manufacturing Company's sole option, of furnishing FOB Customer's plant sufficient sheet product to enable Customer to fabricate replacement panels for the non-conforming panels.

LIMITATION OF DAMAGES

THE LIABILITY OF BERRIDGE MANUFACTURING COMPANY SHALL NOT EXTEND TO PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE FAILURE OF ANY SHEET TO CONFORM WITH THE PROVISIONS OF THIS LIMITED WARRANTY.

OTHER WARRANTIES, INCLUDING MERCHANTABILITY

THERE ARE NO WARRANTIES, PROMISES OR AFFIRMATIONS OF FACT, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN. THE CONDITIONS OF LIABILITY, RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES RELATING TO CLAIMS ARISING FROM ANY NON-CONFORMING SHEET SHALL BE GOVERNED EXCLUSIVELY BY THE TERMS SET FORTH HEREIN.

INSPECTION AND NOTICE OF CLAIM

Customer shall exercise diligence in inspection of material as received from Berridge Manufacturing Company prior to utilization so as to mitigate expense involved in repairing, repainting or replacing non-conforming sheets.

Claims for any breach of warranty must be made within the period of this limited warranty and within 30 days after the period of this limited warranty and within 30 days after Customer discovered the non-conforming sheet; Customer must give Berridge Manufacturing Company a reasonable opportunity to inspect the material.

DUTIES OF CUSTOMER IN PRESENTING CLAIMS

As a condition precedent to Berridge Manufacturing Company's liability hereunder, Customer must present with his claim such records so to enable Berridge Manufacturing Company to establish Berridge Manufacturing Company's order number, Berridge Manufacturing Company's coil number, date of shipment by Berridge Manufacturing Company and the date of installation in the form of building panels for the claimed non-conforming sheet.

Customer shall also present such evidence that establishes any claimed non-conformance was due to a breach of the limited warranty stated herein.

TRANSFERS, REPRESENTATIONS AND ASSIGNMENTS

This limited warranty is extended to Customer as the original purchaser from Berridge Manufacturing Company and is non-transferable and non-assignable. No rights against Berridge Manufacturing Company shall be created by any purported transfer or assignment, nor shall any rights against Berridge Manufacturing Company survive any transfer or assignment. Customer or its agents or representatives shall not claim, represent or imply nor permit its customers, distributors, applicators or contractors to claim, represent or imply that this limited warranty extends or is available to parties other than Customer, and to the limit of is legal right to do so, Customer shall cause any party to cease and desist in any such misrepresentation. This condition shall constitute a material term of this limited warranty and its violation by Customer shall excuse Berridge Manufacturing Company from its obligation hereunder.

WAIVER OR MODIFICATIONS OF BERRIDGE MFG. CO.'S RIGHTS

No terms or conditions, other than those state herein, and no agreement or understanding, oral or written, and no course of conduct or performance, in any way purporting to modify this limited warranty or waive Berridge Manufacturing Company's rights hereunder, shall be binding on Berridge Manufacturing Company unless the same be clearly set forth in writing that expressly refers to this limited warranty and expressly refers to having such effect upon this limited warranty, and is signed by the authorized representative of Berridge Manufacturing Company.

TERMINATION

Berridge Manufacturing Company reserves the right to terminate this limited warranty, except with respect to orders which it has already accepted, upon the giving of written notice thereof.

GOVERNING LAW

The substantive law of the State of Texas shall exclusively govern the rights and duties of the parties under this agreement.

ENTIRE AGREEMENT

The provisions set forth herein are in lieu of and expressly supersede any other provision irrespective of where contained. All proposals, negotiations and representations, if any, made prior to or with reference hereto are merged herein.

GALVALUME® is a registered trademark of BIEC International, Inc.

BERRIDGE MANUFACTURING COMPANY
6515 Fratt Road, San Antonio, Texas 78218 • (210) 650-3050

rev.04Apr.05.PrepaintedGalvalumeWarranty

Firestone

ROOFING MEMBRANE LIMITED WARRANTY

Warranty No: {ins#0} FBPCO # {ins#1} Square Footage: {ins#2} s.f.
Building Owner: {ins#3}
Building Identification: {ins#4}
Building Address: {ins#5}
Warranty Period Of: {ins#8} Years Beginning on: {ins#6}
Roofing Contractor: {ins#7}

For the warranty period indicated above, Firestone Building Products Company, LLC ("Firestone"), an Indiana limited liability company, warrants to the Building Owner ("Owner") above that Firestone will, subject to the Terms, Conditions and Limitations, set forth below, provide replacement membrane materials sufficient to replace any area of Firestone Roofing Membrane ("Membrane") which leaks as a result of ordinary exposure to the elements or any manufacturing defect in the Membrane. Firestone's replacement obligations over the life of this warranty are limited to the owners original cost of the Membrane, prorated based on the remaining months of the unexpired warranty.

TERMS, CONDITIONS AND LIMITATIONS

1. The Membrane is limited to mean the Firestone brand Membrane when installed in accordance with Firestone Technical Specifications.
2. In the event any leak should occur in the Membrane: (a) The Owner must give written notice to Firestone within thirty (30) days of any occurrence of a leak. By so notifying Firestone, the Owner authorizes Firestone or its designee to investigate the cause of the leak. (b) If upon investigation, Firestone determines that the leak is caused by deterioration in the Membrane as a result of ordinary exposure to the elements, the Owner's sole and exclusive remedy and Firestone's liability shall be limited to the supply of replacement membrane material sufficient to replace the affected area of membrane; (c) Should the investigation reveal that the leak is caused by something other than causes set forth in 2(b) above, investigation costs shall be paid by the Owner. Failure by Owner to pay for these costs shall render this Membrane Limited Warranty ("Limited Warranty") null and void. If the cause of the leak is determined by Firestone to be outside the scope of this Limited Warranty, Firestone shall advise the Owner of the type and/or extent of repairs required to be made at the Owner's expense which, if the Owner properly makes, will permit this Limited Warranty to remain in effect for the unexpired portion of its term. Failure by the Owner to make these repairs in a reasonable manner and within a reasonable time shall render this Limited Warranty null and void. (d) Any dispute over any claim between the Owner and Firestone concerning this Limited Warranty shall be settled by mediation. In the event that the Owner and Firestone cannot resolve the dispute, controversy or claim in mediation, the Owner and Firestone agree that neither party will commence or prosecute any suit, proceeding, or claim other than in the courts of Hamilton County in the state of Indiana or the United States District Court Southern District of Indiana Indianapolis Division. Each party irrevocably consents to the jurisdiction and venue of the above identified courts.
3. Firestone shall have no obligation under this Limited Warranty unless and until Firestone and its designated applicator have been paid in full for all materials, supplies, services, warranty costs, and other costs which are incurred in, or associated with, the System.
4. Firestone shall have no obligation under this Limited Warranty and no other liability, now or in the future if a leak or damage is caused by: (a) Natural forces, disasters, or acts of God; including, but not limited to, winds, hurricanes, tornadoes, hail, lightning, earthquakes, atomic radiation, insects, or animals; (b) Any other cause not caused by Firestone or its designee; (c) Any act(s) of war, which damages the System or which impairs the Membrane's ability to resist leaks; (d) Failure by the Owner to exercise reasonable care in maintaining the membrane, said maintenance to include, but not limited to those items listed on the reverse side of this Limited Warranty titled "Building Envelope Care and Maintenance Guide"; (e) Deterioration or failure of building components including, but not limited to, the roof substrate, walls, mortar, HVAC units, etc.; (f) Condensation or infiltration of moisture in, through or around the walls, ceilings, rooftop hardware or equipment, building structure or underlying or surrounding materials; (g) Any acid, oil, harmful chemical, or other physical reaction and the like which comes in contact with the Membrane, which damages the Membrane, or which impairs the Membrane's ability to resist leaks; (h) Alterations or repairs to the Membrane not approved in writing by Firestone; (i) The architecture, engineering, construction or design of the roof, roofing system, or building. Firestone does not undertake any analysis of the architecture or engineering required to evaluate what type of roof system is appropriate; (j) A change in building use or purpose; (k) Failure to give proper notice as set forth in paragraph 2(a) above.
5. This Limited Warranty shall be transferable subject to Firestone inspection, written approval, and payment of the current transfer fee.
6. During the term of this Limited Warranty, Firestone, its designated representative or employees shall have free access to the roof during regular business hours. In the event that roof access is limited due to security or other restrictions, Owner shall reimburse Firestone for all reasonable costs incurred during inspection and/or repair of the System that are due to delays associated with said restrictions. Owner shall be responsible for the removal and replacement of any overburdens, superstrata or overlays, either permanent or temporary, as necessary to expose the surface of the System for inspection and/or repair. Failure by Owner to pay these costs or to deny roof access to Firestone shall render this Limited Warranty null and void.
7. Firestone's failure to enforce any of the terms or conditions stated herein shall not be construed as a waiver of such provision or of any other terms and conditions of this Limited Warranty.
8. This Limited Warranty shall be governed and construed in accordance with the laws of the State of Indiana without regard to conflict of laws.
9. This Limited Warranty does not cover flashings, seams, adhesives, sealants, coatings or workmanship.

FIRESTONE DOES NOT WARRANT PRODUCTS INCORPORATED OR UTILIZED IN THIS INSTALLATION WHICH IT HAS NOT FURNISHED. FIRESTONE SPECIFICALLY DISCLAIMS LIABILITY, UNDER ANY THEORY OF LAW, ARISING OUT OF THE INSTALLATION OR PERFORMANCE OF, OR DAMAGES SUSTAINED BY OR CAUSED BY, PRODUCTS NOT FURNISHED BY FIRESTONE. THIS LIMITED WARRANTY SUPERSEDES AND IS IN LIEU OF ALL OTHER WARRANTIES OR GUARANTEES WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY SHALL BE THE OWNER'S SOLE AND EXCLUSIVE REMEDY AGAINST FIRESTONE, AND FIRESTONE SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR OTHER DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGE TO THE BUILDING OR ITS CONTENTS OR THE ROOF DECK. THIS LIMITED WARRANTY CANNOT BE AMENDED, ALTERED OR MODIFIED IN ANY WAY EXCEPT IN WRITING SIGNED BY AN AUTHORIZED OFFICER OF FIRESTONE. NO OTHER PERSON HAS ANY AUTHORITY TO BIND FIRESTONE WITH ANY REPRESENTATION OR WARRANTY WHETHER ORAL OR WRITTEN.

FIRESTONE BUILDING PRODUCTS COMPANY, LLC
By: John R. Geary

Authorized
Signature: _____
Title: VP of Quality, Technology & Product Development



Project Check List

Bid 11-23, Roofing Repairs and Upgrades

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.

- ☒ 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)
 - In lieu of a bid bond, the bidder may submit a cashier's check for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.
- ☒ All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).
- ☒ All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.
- ☒ All bidders shall submit the following forms with each bid: Bid Pricing Form, Bid Proposal Form, Vendor References, Debarment Certification Form, & Statement of Disclosure.
- ☒ All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents
- ☒ All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: SCHEFERS ROOFING

ARKANSAS CONTRACTORS LICENSE NUMBER: 0194490311



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

Bid 11-23, Addendum 1

Bid 11-23, Roofing Repairs and Upgrades

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Friday, March 04, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

Bid 11-23, has the following modifications and clarifications:

-  1. The bid form for this bid has been revised and is included with this addendum. ALL BIDDERS SHALL USE THE ATTACHED REVISED BID FORM. FAILURE TO USE THE CORRECT BID FORM CAN RESULT IN YOUR BID BEING REJECTED.
-  2. The **bid deadline has been extended until** Friday, March 18, 2011. All bids shall be turned in before **Friday, March 18, 2011 at 2:00:00, local time.** Bids shall be turned in to the City of Fayetteville, Purchasing Division, Room 306 in City Hall, located at 113 W. Mountain, Fayetteville, AR 72701.
-  3. The City will hold tours of the current selected project sites on Friday, March 11, 2011, starting at 9:00 AM. Tours are scheduled as listed below and are non-mandatory. Please refer to the attached pre-bid agenda for addresses of each location.

Tour 1 – Fayetteville Chamber of Commerce, 9:00 AM – 10:00 AM
Tour 2 – Mount Sequoyah (all 3 buildings), 11:00 AM – Noon
Tour 3 – Botanical Gardens of the Ozarks, 2:00 PM – 3:00 PM
-  4. Project summaries for each of the five (5) locations are available on the City of Fayetteville, Purchasing Division website at www.accessfayetteville.org then under the "Business" tab clicking "Bid's, RFP's, & RFQ's". Bidders are encouraged to review and become familiar with this information to obtain a better understanding of the potential scope of work.
-  5. The attached pre-bid agenda is hereby made part of this bid. The sign in sheet from the meeting held on 3/4/11 is also attached.
-  6. Mark up percentage for each bid shall remain firm throughout the entire term of the contract. Labor rates can be evaluated with the City on an annual basis or when Davis-Bacon Wage Rates update or change. Any request for wage rate increase must be evaluated and approved by the City and be reasonable in comparison with the CPI index.

ACKNOWLEDGED  P.M.
SCHEFERS ROOFING



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

Bid 11-23, Addendum 2

Bid 11-23, Roofing Repairs and Upgrades

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Friday, March 11, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

Bid 11-23, has the following modifications and clarifications:

1. Applicable federal, state, and local taxes will apply to the work being done on the projects; however, it **SHALL NOT** be included with the bid prices presented in this bid. The selected contractor will charge any applicable sales taxes to the City upon invoicing.
2. Spreadsheets containing past utility bill data are available. Contractors interested in this data need to e-mail Andrea Foren (aforen@ci.fayetteville.ar.us) and request those documents. They will be sent to any interested bidder upon request.
3. Any work that involves an electrician will be performed by others.

ACKNOWLEDGED *[Signature]* P.M.
SCHEFERS ROOFING



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

Bid 11-23, Addendum 3

Bid 11-23, Roofing Repairs and Upgrades

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Thursday, March 17, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

Bid 11-23, has the following modifications and clarifications:

1. The deadline for this **bid has been extended until Tuesday, March 22, 2011 before 2:00:00 PM, local time.** All sealed bids shall be delivered to the Fayetteville Purchasing Division, located in room 306 at City Hall, 113 W. Mountain, Fayetteville, AR 72701.

ACKNOWLEDGED JRD WHP.M.
SCHEPERS ROOFING

City of Fayetteville Staff Review Form

A. 5
 Bid #11-25 Heckathorn
 Construction Company, Inc.
 Page 1 of 16

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning

Division

Sustainability & Strategic Planning

Department

Action Required:

The City of Fayetteville will have 5 contracts after all bidding that will make energy efficient improvements in the areas of HVAC, Roofing, Insulation, Window & Door Replacement, and solar equipment. Using funds from the Energy Block Grant, the City will allocate money to each approved project, based on project needs and/or requirements. The funds will be a loan to the project owner, with proceeds of energy savings returning to the Fund. The bid is based upon mark-up of materials and hourly rate. The window and door replacement lowest qualified bidder is Heckathorn (Bid 11-25).

	NTE \$220,000.00/5 contracts	Energy Block Grant
Cost of this request	Category / Project Budget	Program Category / Project Name
2240.9240.5342.99	\$ 195.00	Energy Block Grant
Account Number	Funds Used to Date	Program / Project Category Name
none		
09011.0020	NTE \$220,000.00/5 contracts	Energy Block Grant
Project Number	Remaining Balance	Fund Name

Budgeted Item

☒

Budget Adjustment Attached

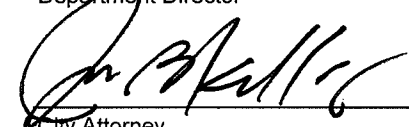
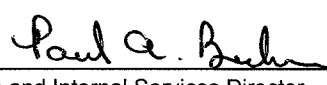
☐

 Department Director
4/15/11
Date

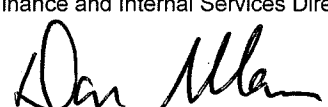
Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


 City Attorney
4/19/11
Date

 Finance and Internal Services Director
4-20-2011
Date
 Received in City
 Clerk's Office

04-15-11P03:10 RCVD


 Chief of Staff
4-20-11
Date
 Received in
 Mayor's Office


 Mayor
4/19/11
Date


Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *JC*
Thru: Don Marr, Chief of Staff
DATE: April 11, 2011
SUBJECT: Bid 11-25, Window & Door Replacement

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve Bid 11-25 for Window & Door Replacement not to exceed a total cost of \$40,742 without further approval from City Council. The bid was evaluated based upon mark-up of materials and hourly rates. The contract is for one year with four automatic annual renewal options. Heckathorn Construction was the only bidder and is recommended for award.

Budget Impact

Contract costs will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009. Combined, Bids 11-22, 11-23, 11-25, 11-33, and 11-34 will not exceed \$220,000 without further approval from the City Council.

Other City Departments are allowed to utilize these annual contracts, but will be required to follow standard procurement procedures.



BID: 11-25
DATE: 03/22/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Bid 11-25, Window and Door Replacements

Name of Contractor:		Heckathorn Construction Company			
SECTION A: Materials Subject to Buy American Requirements		A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$S Amount of Mark Up	\$S Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	15%	x \$1,500	= \$225	\$1,725.00
2	General Material (Cost plus %) \$101-\$500	12%	x \$1,500	= \$180	\$1,680.00
3	General Material (Cost plus %) \$501-\$1000	10%	x \$1,500	= \$150	\$1,650.00
4	General Material (Cost plus %) \$1001-and up	10%	x \$1,500	= \$150	\$1,650.00
5	Doors	10%	x \$1,000	= \$100	\$1,100.00
6	Windows	10%	x \$25,000	= \$2,500	\$27,500.00
Estimated Cost for Section A (Sum of Items 1-6):					\$35,305.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A	B	C (A x B)	
Item	Description	Estimated hours	Hourly Rate	Estimated Labor Cost	
7	Window & Door Replacement - Rate 1 (Installer)	80	x \$27.00	= \$2,160.00	
8	Window & Door Replacement - Rate 2 (Installer/Foreman)	80	x \$37.00	= \$2,960.00	
9	Window & Door Replacement - Rate 3 (Foreman/Inspector)	4	x \$41.00	= \$164.00	
10	Window & Door Replacement - Rate 4 (Supervisor/Inspector)	3	x \$51.00	= \$153.00	
Estimated Cost for Section B (Sum of Items 7-10):					\$5,437.00
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)					\$40,742.00

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

CERTIFIED:

P. Vice

P. VICE, PURCH MGR

Ali
WITNESS

03/22/11

DATE

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #11-25 AND AUTHORIZING A CONTRACT WITH HECKATHORN CONSTRUCTION COMPANY, INC. IN AN AMOUNT NOT TO EXCEED \$40,742.00 FOR WINDOW AND DOOR REPLACEMENTS RELATED TO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDED COMMUNITY REVOLVING LOAN FUND PROJECTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-25 and authorizes a contract with Heckathorn Construction Company, Inc. in an amount not to exceed \$40,742.00 for window and door replacements related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CONTRACT

REFERENCE BID: 11-25, Window & Door Replacements

Contractor: Heckathorn Construction Company, Inc.

Term: 1 year with 4 automatic renewal options

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and **Heckathorn Construction Company, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Heckathorn Construction Company, Inc.** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per **Bid 11-25** as stated in **Heckathorn Construction Company, Inc.** bid proposal, and in accordance with specifications attached hereto and made a part hereof under **Bid 11-25**, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Heckathorn Construction Company, Inc.** based on their bid form in pricing as shown in bid and attached to this contract. Payments will be made after approval and acceptance of work, submission of detailed invoice, and submission of certified payroll. Payments will be made within a maximum 30 days after acceptance of invoice. **Heckathorn Construction Company, Inc.** agrees to make detailed invoicing related documentation available to the City or the Department of Energy (DOE) upon request (for example, during a post-award audit), including but not limited to actual cost of material, etc.
3. No work shall be started on any project for any location with out the receipt of a City issued Purchase Order (PO). All work performed by **Heckathorn Construction Company, Inc.** without a PO is at the risk of **Heckathorn Construction Company, Inc.**
4. The Contract documents which comprise this contract between the City of Fayetteville and **Heckathorn Construction Company, Inc.** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to **Bid 11-25** with the specifications and conditions typed thereon.
 - B. **Heckathorn Construction Company, Inc.** bid proposal, including mark up on materials and hourly rates.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
5. These Contract documents constitute the entire agreement between the City of Fayetteville and **Heckathorn Construction Company, Inc.** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Heckathorn Construction Company, Inc.**
6. **Heckathorn Construction Company, Inc.** shall not assign its duties under the terms of this agreement.
7. **Heckathorn Construction Company, Inc.** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or

death, arising from performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

8. **Heckathorn Construction Company, Inc.** agrees to abide by the following American Recovery and Reinvestment Act (ARRA) Provisions at all times and fully provide efforts to assist the City with compliance:

a. **Buy American** – Section 1605 of the Recovery Act requires that all iron, steel, and manufactured goods used in the project must be produced within the United States except as provided in the following:

- i. The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- ii. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- iii. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
- iv. If all received quotes do not meet the Section 1605 of the Recovery Act the City of Fayetteville is required to receive independent verification from the Federal Government to move forward.

b. **Waste Stream** – **Heckathorn Construction Company, Inc.** assures to create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. **Heckathorn Construction Company, Inc.** shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. **Heckathorn Construction Company, Inc.** shall make the waste management plan and related documentation available to the City to or DOE (Department of Energy) upon request (for example, during a post-award audit).

c. **Davis-Bacon Wage Rates** - **Heckathorn Construction Company, Inc.** agrees to pay wage rates as presented in the latest published wage rates for Davis-Bacon for federally funded projects. **Heckathorn Construction Company, Inc.** shall submit certified payrolls to the City of Fayetteville upon delivery of detailed invoicing.

9. **Heckathorn Construction Company, Inc.** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Heckathorn Construction Company, Inc.** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.
\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by Heckathorn Construction Company, Inc.

10. Heckathorn Construction Company, Inc. to furnish proof of licensure as required by all local and state agencies.
11. This contract may be terminated by the City of Fayetteville or Heckathorn Construction Company, Inc. with 10 days written notice.
12. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
13. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

LIONELD JORDAN, Mayor

Attest: Sondra Smith, City Clerk

Heckathorn Construction Co., Inc.

CONTRACTOR

BY Don L. Heckathorn President

NAME AND TITLE

Don L. Heckathorn

ATTEST: COMPANY SECRETARY

Janet S. Heckathorn Secretary

Janet S. Heckathorn

1880 North Birch Avenue; Fayetteville, AR 72703

BUSINESS ADDRESS



BID: 11-25
DATE: 03/22/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

A. 5
Bid #11-25 Heckathorn
Construction Company, Inc.
Page 8 of 16

Bid 11-25, Window and Door Replacements

Name of Contractor:		Heckathorn Construction Company				
SECTION A: Materials Subject to Buy American Requirements		A		B	C (A x B)	D (B + C)
Item	Description	Mark Up %		Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	15%	x	\$1,500	= \$225	\$1,725.00
2	General Material (Cost plus %) \$101-\$500	12%	x	\$1,500	= \$180	\$1,680.00
3	General Material (Cost plus %) \$501-\$1000	10%	x	\$1,500	= \$150	\$1,650.00
4	General Material (Cost plus %) \$1001-and up	10%	x	\$1,500	= \$150	\$1,650.00
5	Doors	10%	x	\$1,000	= \$100	\$1,100.00
6	Windows	10%	x	\$25,000	= \$2,500	\$27,500.00
Estimated Cost for Section A (Sum of Items 1-6):						\$35,305.00
SECTION B: Labor Subject to Davis-Bacon Wage Rates		A		B	C (A x B)	
Item	Description	Estimated hours		Hourly Rate		Estimated Labor Cost
7	Window & Door Replacement - Rate 1 (Installer)	80	x	\$27.00	=	\$2,160.00
8	Window & Door Replacement - Rate 2 (Installer/Foreman)	80	x	\$37.00	=	\$2,960.00
9	Window & Door Replacement - Rate 3 (Foreman/Inspector)	4	x	\$41.00	=	\$164.00
10	Window & Door Replacement - Rate 4 (Supervisor/Inspector)	3	x	\$51.00	=	\$153.00
Estimated Cost for Section B (Sum of Items 7-10):						\$5,437.00
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)						\$40,742.00

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

P. Vice

Ali

03/22/11

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

***NAME OF FIRM:** Heckathorn Construction Company, Inc.

Purchase Order and /Payments shall be issued to this name

***BUSINESS ADDRESS:** 1880 N. Birch Avenue

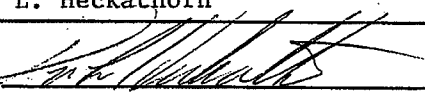
***CITY:** Fayetteville ***STATE:** AR ***ZIP:** 72703

***PHONE:** 479-442-5386 **FAX:** 479-442-7385

***E-MAIL:** heckconst@sbcglobal.net Arkansas License No: 0023780411

Attest Company Secretary

***BY: (PRINTED NAME)** Don L. Heckathorn

***AUTHORIZED SIGNATURE:** 

***TITLE:** President

***DATE:** March / 22nd / 18 / 2011

Acknowledge Addendums:

Addendum No. 1 Dated: 3-04-2011 Acknowledged by: David Christian Hansen

Addendum No. 2 Dated: 3-11-2011 Acknowledged by: David Christian Hansen

Addendum No. 3 Dated: 3-17-2011 Acknowledged by: David Christian Hansen

Addendum No. Dated: Acknowledged by:

City of Fayetteville
 Bid 11-25, Window & Door Replacements
 Bid Pricing Form – REVISED PER ADDEDNUM 1

BID 11-25, ADDENDUM 1 - REVISED BID FORM					
SECTION A: Materials		A	B	C	D
Subject to Buy American Requirements				(A x B)	(B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	\$\$ Amount of Mark Up	\$\$ Amount Mark Up PLUS Material Cost
1	General Material (Cost plus %) \$0-\$100	15 %	\$1,500	225	\$ 1,725
2	General Material (Cost plus %) \$101-\$500	12 %	\$1,500	180	\$ 1,680
3	General Material (Cost plus %) \$501-\$1000	10 %	\$1,500	150	\$ 1,650
4	General Material (Cost plus %) \$1001-and up	10 %	\$1,500	150	\$ 1,650
5	Doors	10 %	\$1,000	100	1,100
6	Windows	10 %	\$25,000	2,500	\$ 27,500
Estimated Cost for Section A (Sum of Items 1-6):					\$ 35,305
SECTION B: Labor		A	B	C	
Subject to Davis-Bacon Wage Rates				(A x B)	
Item	Description: Most basic trade is listed as "Rate 1". Skill set increases with increased rate number.	Estimated hours subject to change	Hourly Rate	Estimated Labor Cost	
7	Window & Door Replacement - Rate 1 (Installer)	80	\$ 27.00	\$ 2,160	
8	Window & Door Replacement - Rate 2 (Installer/Foreman)	80	\$ 37.00	\$ 2,960	
9	Window & Door Replacement - Rate 3 (Foreman/Inspector)	4	\$ 41.00	\$ 164	
10	Window & Door Replacement - Rate 4 (Supervisor/Inspector)	3	\$ 51.00	\$ 153	
Estimated Cost for Section B (Sum of Items 7-10):					\$ 5,437
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B):					\$ 40,742
**Bid bond required on 5% of "Total Estimated Cost for Items 1-10". A 100% Performance and Payment bond is required for same within ten days after notice of contract award.					
Name of Contractor: <u>Heckathorn Construction Company, Inc.</u> Arkansas State License No. <u>0023780411</u>					

City of Fayetteville
Bid 11-25, Window & Door Replacements
Bid Proposal Form (shall be submitted with all bids)

This page becomes an integral part of the proposal submitted

by Heckathorn Construction Company, Inc.
(Vendor/Company Name)

The undersigned proposes to furnish and deliver, in accordance with the requirements of these bid documents issued February of 2011, prepared by the City of Fayetteville, Purchasing Division, for the time period beginning date of Bid Award and ending twelve months thereafter as per Bid 11-25, subject to four one (1) year annual renewals. Item numbers below refer to the same numbered paragraph of the Instructions to Bidders and the Specifications.

INSTRUCTIONS TO BIDDERS:

1.1. Prices shall include all labor, supervision, materials, equipment, transportation and services necessary to do a top quality job. YES x NO

1.2. Discounts offered: N/A

1.3. Condition of Bid FIRM? YES x NO
SUBJECT TO ESCALATION ...N/A.....
Method of Escalation, if applicable N/A.....
BIDS MUST BE FIRM FOR ACCEPTANCE FOR 90 Days
Bid is Firm 90 Days Weeks

1.4. Bidder will accept total bid only? YES x NO
(or any portion of bid award) YES NO x

1.5. Bidder has submitted an original bid document? YES x NO

1.6. Bidder will provide Workman's Compensation Insurance as outlined? YES x NO

1.7. Bidder will provide General Liability Insurance as outlined? YES x NO

1.8. Bidder will provide Automobile Coverage as outlined? YES x NO

1.9. Bidder will indemnify the City of Fayetteville? YES x NO

2.0. Bidder has included qualification & experience information as required? YES x NO

3.0 PURCHASES BY OTHER PUBLIC AGENCIES:

Bidder agrees to extend pricing, terms, and conditions to other public agencies

YES x NO

City of Fayetteville
Bid 11-25, Window & Door Replacements
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: Heckathorn Construction Company, Inc.

BUSINESS ADDRESS: 1880 N. Birch Avenue Fayetteville, AR 72703

NUMBER OF YEARS IN BUSINESS: 50 Years HOW LONG IN PRESENT LOCATION: 32 Years

TOTAL NUMBER OF CURRENT EMPLOYEES: 10 FULL TIME 1 PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 4 FULL TIME 0 PART TIME

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be completed):

1. City of Elkins--Library
COMPANY NAME

Elkins, AR 72727
CITY, STATE, ZIP

Susan Unger
CONTACT PERSON

479-643-2904
TELEPHONE

NONE
FAX NUMBER

librarylady@windstream.net
E-MAIL ADDRESS

2. Prairie Grove Telephone Company
COMPANY NAME

Prairie Grove, AR 72756
CITY, STATE, ZIP

David Parks
CONTACT PERSON

479-846-7200
TELEPHONE

479-267-1112
FAX NUMBER

dmp@pgtc.com
E-MAIL ADDRESS

3. Beverly Manor Apartments
COMPANY NAME

Fayetteville, AR 72701
CITY, STATE, ZIP

Allen White
CONTACT PERSON

479-521-8442
TELEPHONE

479-521-8411
FAX NUMBER

allen42@swbell.net
E-MAIL ADDRESS

4. Northwest Arkansas Community College
COMPANY NAME (Burns Hall)

Bentonville, AR 72712
CITY, STATE, ZIP

Jim Lay
CONTACT PERSON

479-619-4130
TELEPHONE

479-619-7067
FAX NUMBER

jlay@nwacc.edu
E-MAIL ADDRESS

City of Fayetteville
Bid 11-25, Window & Door Replacements
Debarment Certification Form – **THIS FORM SHALL BE SUBMITTED WITH ALL BIDS**

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: Don L. Heckathorn

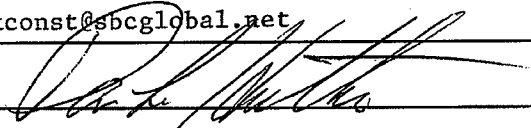
COMPANY: Heckathorn Construction Company, Inc.

PHYSICAL ADDRESS: 1880 N. Birch Avenue Fayetteville, AR 72703

MAILING ADDRESS: 1880 N. Birch Avenue Fayetteville, AR 72703

PHONE: 479-442-5386 FAX: 479-442-7385

EMAIL: heckconst@sbglobal.net

SIGNATURE: 

DATE: March 22, 2011

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.

City of Fayetteville
Bid 11-25, Window & Door Replacements
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

 X 1.) NO KNOWN RELATIONSHIP EXISTS

 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Don L. Heckathorn

Printed Name

Signature

March 22, 2011

Date

BID BOND

Conforms with The American Institute of
Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Heckathorn Construction Company, Inc.

_____ as Principal, hereinafter called the Principal,

and the Hartford Fire Insurance Company

of One Hartford Plaza, Hartford, Connecticut

, a corporation duly organized under
the laws of the State of Connecticut, as Surety, hereinafter called the Surety, are held and firmly bound unto

City of Fayetteville, Arkansas

as Obligees, hereinafter called the Obligees,

in the sum of Five Percent of Amount of Bid

Dollars (\$ 5% of Bid), for the payment of which sum well and truly to be made, the said Principal and the said
Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Bid 11-25, Window & Door Replacements, Fayetteville, Arkansas

NOW, THEREFORE, if the Obligees shall accept the bid of the Principal and the Principal shall enter into a Contract with the
Obligees in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract
Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and
material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond
or bonds, if the Principal shall pay to the Obligees the difference not to exceed the penalty hereof between the amount specified in said
bid and such larger amount for which the Obligees may in good faith contract with another party to perform the Work covered by said
bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 18th day of March, 2011

Heckathorn Construction Company, Inc. (Seal)

Principal

Don L. Heckathorn

Title

Janet S. Heckathorn Secretary
Witness

Pamela K. Hay
Witness

Hartford Fire Insurance Company

By

Judy Schoggen

Attorney-in-Fact

POWER OF ATTORNEY

THE HARTFORD

BOND, T-4

P.O. BOX 2103, 690 ASYLUM AVENUE
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 38-591481

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☒ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

Benson A. Cashion, Matthew K. Cashion, Jr., Judy Schoggen, William H. Griffin,
Cynthia L. Trickey, Pamela K. Hays, Nick W. Peters
of
Little Rock, AR

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2004 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Scott Sadowsky

Scott Sadowsky, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Assistant Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 1st day of February, 2004, before me personally came M. Ross Fisher, to me known, to me known, who being by me duly sworn, did depose and say: that she resides in the County of Hartford, State of Connecticut; that she is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Scott E. Paseka

Scott E. Paseka
Notary Public

My Commission Expires October 31, 2012

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of March 18, 2011

Signed and sealed at the City of Hartford.



Gary W. Stumper

Gary W. Stumper, Assistant Vice President

City of Fayetteville Staff Review Form

A. 6
 Bid #11-33 Natural State Insulation
 Page 1 of 6

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

5/3/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning

Division

Sustainability & Strategic Planning

Department

Action Required:

The City of Fayetteville will have 5 contracts after all bidding that will make energy efficient improvements in the areas of HVAC, Roofing, Insulation, Window & Door Replacement, and solar equipment. Using funds from the Energy Block Grant, the City will allocate money to each approved project, based on project needs and/or requirements. The funds will be a loan to the project owner, with proceeds of energy savings returning to the Fund. The bid is based upon mark-up of materials and hourly rate. The attic seal/insulation lowest qualified bidder is Natural State Insulation (Bid 11-33).

	NTE \$220,000.00/5 contracts	Energy Block Grant
Cost of this request	Category / Project Budget	Program Category / Project Name
2240.9240.5342.99	\$ 195.00	Energy Block Grant
Account Number	Funds Used to Date	Program / Project Category Name
none		
09011.0020	NTE \$220,000.00/5 contracts	Energy Block Grant
Project Number	Remaining Balance	Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City
 Clerk's Office

Chief of Staff

Date

Received in
 Mayor's Office

Mayor

Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *sc*
Thru: Don Marr, Chief of Staff
DATE: April 11, 2011
SUBJECT: Bid 11-33, Attic Seal & Insulation Services Re-Bid

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve Bid 11-33 for Attic Seal & Insulation Services not to exceed a total cost of \$25,885.10 without further approval from City Council. The bid was evaluated based upon mark-up of materials and hourly rates. The contract is for one year with four automatic annual renewal options. Natural State Insulation is the only bidder and is recommended for award.

Budget Impact

Contract costs will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009. Combined, Bids 11-22, 11-23, 11-25, 11-33, and 11-34 will not exceed \$220,000 without further approval from the City Council.

Other City Departments are allowed to utilize these annual contracts, but will be required to follow standard procurement procedures.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-33 AND AUTHORIZING A CONTRACT WITH NATURAL STATE INSULATION IN AN AMOUNT NOT TO EXCEED \$25,885.10 FOR ATTIC SEAL AND INSULATION SERVICES RELATED TO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDED COMMUNITY REVOLVING LOAN FUND PROJECTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-33 and authorizes a contract with Natural State Insulation in an amount not to exceed \$25,885.10 for attic seal and insulation services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

City of Fayetteville
Bid 11-33, Attic Seal & Insulation Services Re-Bid
Draft Contract – Between City and Contractor

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and _____ In consideration of the mutual covenants contained herein, the parties agree as follows:

1. _____ at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-33 as stated in _____ bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-33, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay _____ based on their bid proposal in an amount not to exceed \$ _____. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and _____ consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-33 with the specifications and conditions typed thereon.
 - B. _____ bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and _____ and may be modified only by a duly executed written instrument signed by the City of Fayetteville and _____.
5. _____ shall not assign its duties under the terms of this agreement.
6. _____ agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from _____ performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. _____ shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, _____ shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability	\$500,000 for each person injured. \$1,000,000 for each accident.
Property Damage Liability	\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by _____.

8. _____ to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or _____ with 10 days written notice.
10. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
11. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

LIONELD JORDAN, Mayor

Attest:

Sondra Smith, City Clerk

CONTRACTOR
BY _____
NAME AND TITLE

ATTEST: COMPANY SECRETARY

BUSINESS ADDRESS

City of Fayetteville Staff Review Form

A. 7
 Bid #11-34 Rocky Grove
 Sun Company
 Page 1 of 6

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning

Division

Sustainability & Strategic Planning

Department

Action Required:

The City of Fayetteville will have 5 contracts after all bidding that will make energy efficient improvements in the areas of HVAC, Roofing, Insulation, Window & Door Replacement, and solar equipment. Using funds from the Energy Block Grant, the City will allocate money to each approved project, based on project needs and/or requirements. The funds will be a loan to the project owner, with proceeds of energy savings returning to the Fund. The bid is based upon mark-up of materials and hourly rate. The solar equipment lowest qualified bidder is [REDACTED] (Bid 11-34).

Cost of this request	NTE \$220,000.00/5 contracts	Energy Block Grant
2240.9240.5342.99	Category / Project Budget	Program Category / Project Name
Account Number	\$ 195.00	Energy Block Grant
none	Funds Used to Date	Program / Project Category Name
09011.0020	NTE \$220,000.00/5 contracts	Energy Block Grant
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

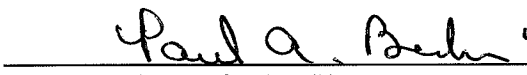

 Department Director 4/15/11
 Date

Previous Ordinance or Resolution # _____


 City Attorney 4/19/11
 Date

Original Contract Date: _____

Original Contract Number: _____


 Finance and Internal Services Director 4-20-2011
 Date

Received in City 04-15-11 P03:10 RCVD
 Clerk's Office
 Kim G.


 Chief of Staff 4-20-11
 Date

Received in
 Mayor's Office




 Mayor 4/19/11
 Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *JC*
Thru: Don Marr, Chief of Staff
DATE: April 11, 2011
SUBJECT: Bid 11-34, Installation of Solar Equipment Re-Bid

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve Bid 11-34 for Solar Equipment Installation not to exceed a total cost of \$170,150 without further approval from City Council. The bid was evaluated based upon mark-up of materials and hourly rates. The contract is for one year with four automatic annual renewal options. Rocky Grove Sun Company was the only bidder and is recommended for award.

Budget Impact

Contract costs will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009. Combined, Bids 11-22, 11-23, 11-25, 11-33, and 11-34 will not exceed \$220,000 without further approval from the City Council.

Other City Departments are allowed to utilize these annual contracts, but will be required to follow standard procurement procedures.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-34 AND AUTHORIZING A CONTRACT WITH ROCKY GROVE SUN COMPANY IN AN AMOUNT NOT TO EXCEED \$170,150.00 FOR SOLAR EQUIPMENT AND INSTALLATION RELATED TO ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDED COMMUNITY REVOLVING LOAN FUND PROJECTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-34 and authorizes a contract with Rocky Grove Sun Company in an amount not to exceed \$170,150.00 for solar equipment and insulation related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

City of Fayetteville
Bid 11-34, Installation of Solar Equipment Re-Bid
Draft Contract – Between City and Contractor

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and _____ . In consideration of the mutual covenants contained herein, the parties agree as follows:

1. _____ at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-34 as stated in _____ bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-34, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay _____ based on their bid proposal in an amount not to exceed \$ _____. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and _____ consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-34 with the specifications and conditions typed thereon.
 - B. _____ bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and _____ and may be modified only by a duly executed written instrument signed by the City of Fayetteville and _____.
5. _____ shall not assign its duties under the terms of this agreement.
6. _____ agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from _____ performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. _____ shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, _____ shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

8. _____ to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or _____ with 10 days written notice.
10. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
11. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

**CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS**

Sondra Smith, City Clerk

City of Fayetteville, AR
Bid 11-34, Installation of Solar Equipment Re-Bid
Page 21 of 29

City of Fayetteville Staff Review Form

C. 1
RZN 11-3777 (2143 North
Ripple Road/Daugherty)
Page 1 of 22

City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

Andrew Garner
Submitted By

Planning
Division

Development Services
Department

Action Required:

RZN 11-3777: (2143 North Ripple Road/Daugherty, 361): Submitted by Bates & Associates for property located at 2143 North Ripple Road. The property is zoned RSF-1, Residential Single-Family, 1 Unit per acre and contains approximately 4.86 acres. The request is to rezone the subject property to R-O, Residential Office.

_____	\$ _____	_____
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 ☐

James C. Tate 04-15-2011
Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 4-15-2011
City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Bailey 4-15-2011
Finance and Internal Services Director Date

Received in City
Clerk's Office

04-15-11P01:42

Ush

Samuel A. Allen 4-18-11
Chief of Staff Date

Received in
Mayor's Office

ENTERED
4/15/11
PH

[Signature] 4/18/11
Mayor Date

Comments:



www.accessfayetteville.org

C. 1
RZN 11-3777 (2143 North
Rupple Road/Daugherty)

Page 2 of 22
THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director &

From: Andrew Garner, Senior Planner

Date: April 14, 2011

Subject: RZN 11-3777 (2143 Rupple Road/Daugherty)

RECOMMENDATION

Planning Commission and staff recommend approval of an ordinance to rezone the subject property from RSF-1, Residential Single Family One Unit Per Acre to R-O, Residential Office.

BACKGROUND

The subject property is located at the southwest corner of Mount Comfort Road and Rupple Road and is developed with two warehouse structures totaling approximately 20,000 square feet that were constructed in 1955 according to the Washington County Assessor's office. Hamestrang Creek and its associated floodplain runs east to west along the southern portion of the property.

The site has access to Rupple Road and Mount Comfort Road. Rupple Road is an unimproved two lane city street in this location. Mount Comfort Road is also an unimproved paved two lane city street along the northern property line. The City improvements for Mount Comfort have been completed just east of this property. Mount Comfort Road is designated as a Minor Arterial Roadway and Rupple Road is identified as a Principal Arterial Parkway. However, the Master Street Plan identifies that Rupple Road will be eventually realigned to the east of this site, to line up in a four-way intersection with the existing signal at Mount Comfort Road/Salem Road. After the realignment of Rupple Road, the existing road adjacent to the eastern border of this site would likely remain as a local street, with this street's odd 'Y' intersection with Mount Comfort being converted into a typical 'T' intersection. The applicant has indicated to staff that they do not have any immediate development plans for the site but would like to be able to market the property for non-residential uses.

DISCUSSION

On April 11, 2011 the Planning Commission forwarded this item to the City Council with a recommendation for approval with a vote of 6-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 11-3777, FOR APPROXIMATELY 4.86 ACRES, LOCATED AT 2143 NORTH RUPPLE ROAD FROM RSF-1, RESIDENTIAL SINGLE-FAMILY, 1 UNIT PER ACRE TO R-O, RESIDENTIAL OFFICE

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

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

From RSF-1, Residential Single-Family, 1 unit per acre to R-O, Residential Office, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

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

PASSED and APPROVED this day of , 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

C. 1
RZN 11-3777 (2143 North
Ripple Road/Daugherty)
Page 4 of 22

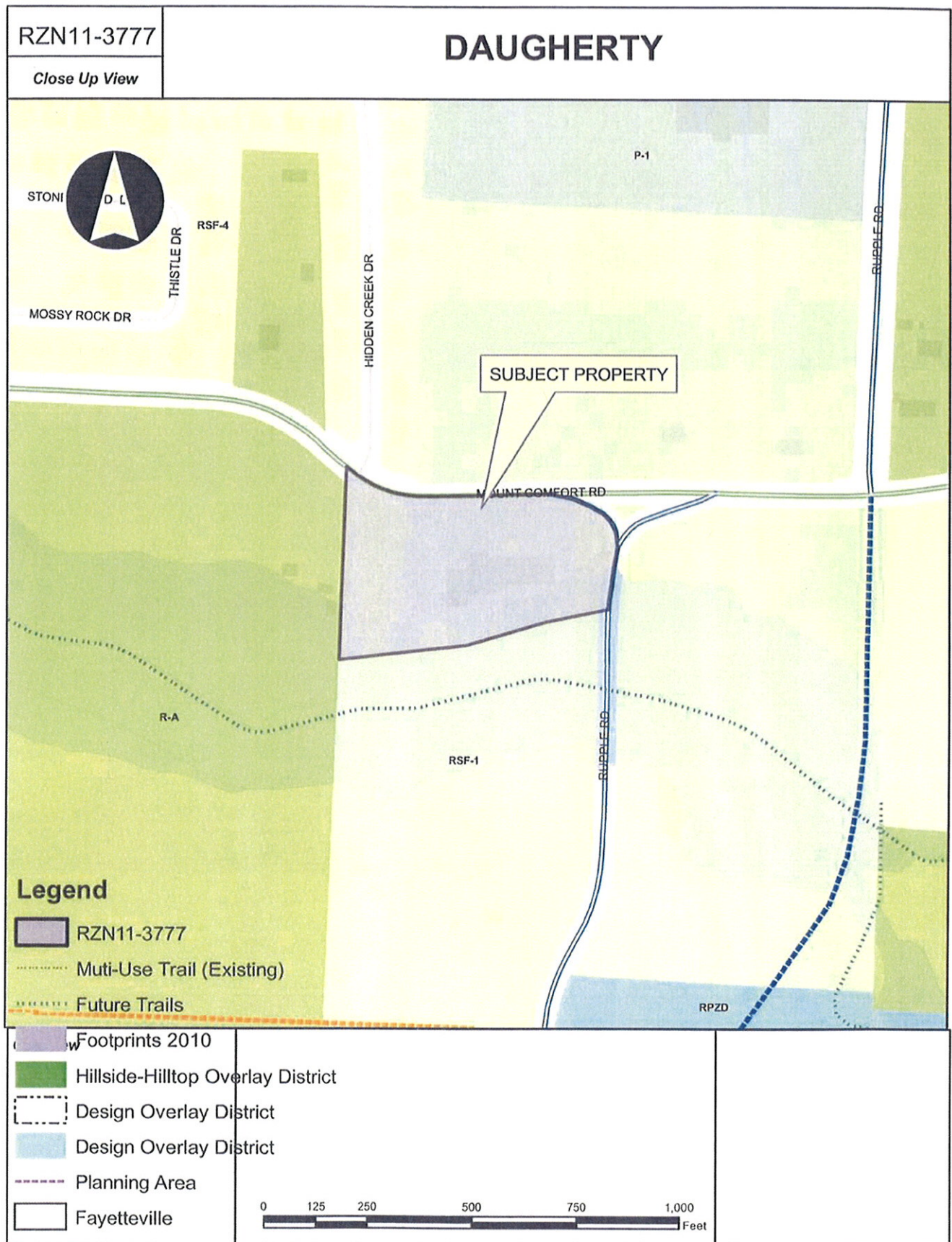


EXHIBIT "B"
RZN 11-3777

EXISTING LEGAL DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 31 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF THE HAMSTRING CREEK BRIDGE, WHICH IS 436.26' SOUTH AND 655.38' WEST OF THE NORTHEAST CORNER OF SAID FORTY ACRE TRACT, AND RUNNING THENCE S76°20'W 151.80' TO A FENCE ON THE NORTH SIDE OF HAMSTRING CREEK; THENCE WITH THE FENCE S71°21'W 307.56' TO A CROSS FENCE BEING ON THE WEST LINE OF SAID FORTY ACRE TRACT, THENCE NORTH ALONG THE WEST LINE OF SAID FORTY ACRE TRACT 374.88' TO A POINT 214.5' SOUTH OF THE NORTHWEST CORNER OF SAID FORTY ACRE TRACT, THENCE CONTINUING NORTH ALONG THE WEST LINE OF SAID FORTY ACRE TRACT 89.76' TO THE CENTERLINE OF THE MT. COMFORT ROAD, SAID POINT BEING 124.74' SOUTH OF THE NORTHWEST CORNER OF SAID FORTY ACRE TRACT, THENCE IN AN EASTERLY DIRECTION WITH THE CENTERLINE OF SAID ROAD TO A POINT WHICH IS 623.70' EAST AND 161.70' SOUTH OF THE NORTHWEST CORNER OF SAID FORTY ACRE TRACT, THENCE IN A SOUTHERLY DIRECTION WITH THE WEST LINE OF THE COUNTY ROAD TO THE POINT OF BEGINNING, CONTAINING 4.86 ACRES, MORE OR LESS.

RZN 11-3777: Rezone (2143 N. RUPPLE RD./DAUGHERTY, 361): Submitted by BATES AND ASSOCIATES for property located at 2143 NORTH RUPPLE ROAD. The property is zoned RSF-1, RESIDENTIAL SINGLE FAMILY - 1 UNIT/ACRE and contains approximately 4.57 acres. The request is to rezone the subject property to R-O, RESIDENTIAL OFFICE.

Dara Sanders, Current Planner, gave the staff report discussing the property setting and staff's recommendation for approval.

Geoff Bates, applicant, stated that he was available for questions.

No public comment was presented.

Commissioner Winston discussed that he was glad that staff and the applicant had worked out issues prior to the Planning Commission meeting (referring to staff's recommendation to the applicant to change their original rezoning request from C-1, Neighborhood Commercial).

Motion:

Commissioner Winston made a motion to forward the item to the City Council with a recommendation for approval. **Commissioner Chesser** seconded the motion. **Upon roll call the motion passed with a vote of 6-0-0.**



PC Meeting of April 11, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: April 5, 2011 Updated April 14, 2011

RZN 11-3777: Rezone (2143 N. RUPPLE RD./DAUGHERTY, 361): Submitted by BATES AND ASSOCIATES for property located at 2143 NORTH RUPPLE ROAD. The property is zoned RSF-1, RESIDENTIAL SINGLE FAMILY - 1 UNIT/ACRE and contains approximately 4.86 acres. The request is to rezone the subject property to R-O, RESIDENTIAL OFFICE.

Planner: Andrew Garner

BACKGROUND:

The subject property is located at the southwest corner of Mount Comfort Road and Ripple Road and is developed with two warehouse structures totaling approximately 20,000 square feet that were constructed in 1955 according to the Washington County Assessor's office. Surrounding land uses and zoning are shown in *Table 1*. Hamestrung Creek and its associated floodplain runs east to west along the southern portion of the property.

Table 1: Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Cemetery; Single family residential	RSF-1, Residential Single Family 1 unit/acre; RSF-4, Residential Single Family 4 units/acre
South	Rural residential	RSF-1, Residential Single Family 1 unit/acre;
East	Rural/pasture	RSF-1, Residential Single Family 1 unit/acre;
West	Rural/pasture	R-A, Residential Agricultural

Proposal: The applicant has submitted an application to rezone the property from RSF-1, Residential Single Family One Unit Per Acre to R-O, Residential Office.

Public Comment: Staff has not received public comment.

RECOMMENDATION:

Staff recommends forwarding RZN 11-3777 to the City Council with a recommendation of approval based on findings stated herein.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>04-11-11</u>	☐ Approved	☒ Forwarded	☐ Denied
Motion: <u>Winston</u>	Second: <u>Chesser</u>	Vote: <u>6-0-0</u>	
CITY COUNCIL ACTION:		Required <u>YES</u>	
		☐ Approved	☐ Denied
Date:			

INFRASTRUCTURE:

- Streets:** The site has access to Ripple Road and Mount Comfort Road. Ripple Road is an unimproved two lane city street in this location. Mount Comfort Road is also an unimproved paved two lane city street along the northern property line. The City improvements for Mount Comfort have been completed just east of this property. Street improvements to this site will be evaluated at the time of development. Mount Comfort Road is designated as a Minor Arterial Roadway and Ripple Road is identified as a Principal Arterial Parkway. However, the Master Street Plan identifies that Ripple Road will be eventually realigned to the east of this site, to line up in a four-way intersection with the existing signal at Mount Comfort Road/Salem Road. After the realignment of Ripple Road, the existing road adjacent to the eastern border of this site would likely remain as a local street, with this street's odd 'Y' intersection with Mount Comfort being converted into a typical 'T' intersection.
- Water:** Public water is available to the property. There is 6" water main on the east side of Ripple Road and an 8" main running through this property. Public water main improvements may need to be extended to the property to provide domestic and fire flow for any proposed development.
- Sewer:** Sanitary sewer is not available to the site. There is a 15" public main located along creek on the adjacent property to the south. Public mains will need to be extended through the property to serve any proposed development.
- Drainage:** Standard improvements and requirements for drainage will be required for any development. This property is affected by the 100-year floodplain and the Streamside Protection Zones associated with Hamestring Creek.
- Police:** The Fayetteville Police Department has not objected to this request.
- Fire:** The Fayetteville Fire Department has not objected to this request.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as **City Neighborhood Area**, which is a denser and primarily residential urban fabric where mixed and low-intensity nonresidential uses are usually confined to corner locations.*

*As small portion of the southern area of the site associated with the Hamestring Creek floodplain is designated as **Natural Area**.*

FINDINGS OF THE STAFF

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

Finding: The proposed rezoning is consistent with current land use planning objectives and policies and is compatible with adjacent properties in the same district. Surrounding properties are primarily rural residential with some undeveloped area, and function within a residential district that has several churches along Mount Comfort Road, including one adjacent to the north. The intersection of Mount Comfort Road/Rupple Road is appropriate for non-residential services. This area of Mount Comfort Road is indicated on the Future Land Use plan as City Neighborhood Area, with a small area around the Hamestring Creek in the southern portion of the site as Natural Area. The proposed low-intensity non-residential uses permitted in the R-O zone would be compatible with the existing and future residential uses as it would serve and be supported by the future population of the surrounding areas. The non-residential uses allowed under the proposed R-O zoning at the existing intersection of Mount Comfort Road/Rupple Road would be appropriate given the relatively high volume of traffic at the intersection of a Minor Arterial and a Principal Arterial, and would provide opportunities for goods/services in closer proximity to residents of the area. The Master Street Plan currently shows Rupple Road being moved to the east away from this site to line up with the Salem Road intersection. The existing unimproved Rupple Road adjacent to this site would likely become a local street mainly for access to this property. This would result in this property being at the intersection of a Minor Arterial and a Local Street, which would still be appropriate for the proposed R-O zoning, in staff's opinion. The permitted uses for the R-O zoning area attached to this report and show that this district is a mixed use zoning allowing a variety of office, small-scale commercial, and residential uses.

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

Finding: The proposed zoning is justified in order to promote orderly and consistent development patterns and to allow for the build out of the area consistent with the City Plan 2025. The City Plan 2025 identifies some Guiding Policies for City Neighborhood Areas that are applicable to the proposed rezoning as follows:

G:\ETC\Development Services Review\2011\Development Review\11-3777 RZN 2143 N Rupple Rd (Daugherty)\03 Planning Commission\04-11-11\Comments and Redlines

Guiding Policies:

- *Provide non-residential uses that are accessible for the convenience of individuals living in residential districts and where compatibility with existing desirable development patterns occurs.*
- *Reduce the length and number of vehicle trips generated by residential development by enhancing the accessibility to these areas...*
- *Encourage developers to designate and plan for mixed-use corners at the time of approval to properly plan for accessibility to these areas.*

The proposed use would be compatible to adjacent land uses and would encourage continued growth of this identified mixed use area. The non-residential uses would serve the existing and future population of the surrounding areas and would not create a nuisance or adversely affect the public interest.

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

Finding: Future development with the proposed zoning would increase traffic accessing onto Mount Comfort Road and Rupple Road more than that which exists today. Mount Comfort Road is a Minor Arterial roadway that has been improved by the City just east of this site as part of the Transportation Improvement Bond Program. The Master Street Plan currently shows Rupple Road being moved to the east away from this site to line up with the Salem Road intersection. At some point in the future when Rupple Road is realigned, the existing unimproved Rupple Road adjacent to this site would likely become a local street mainly for access to this property. With the recent improvements to Mount Comfort Road in this vicinity and standard improvements required to immediately adjacent streets that would be required at the time of development of this property, the proposed zoning will not create or appreciably increase traffic danger or congestion. Rather the proposed zoning would allow for the provision of services to residents in the area and drivers along busy arterial roadways.

It is the opinion of the Fayetteville Police department that an appreciable increase in traffic danger and congestion will not be created by this rezoning request.

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

Finding: The proposed zoning would increase the potential population density over the existing RSF-1 zoning; however, the City public service providers have reviewed this request and do not anticipate that this rezoning would undesirably increase the load on public services.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: Not applicable. Staff is recommending approval.

161.05 District RSF-1, Residential Single-Family – One Unit Per Acre

(A) *Purpose.* A district having single-family detached residences on lots with a minimum size of one unit per acre. The district is designed to permit and encourage the development of very low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(C) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings

(D) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(E) *Density.*

Units per acre	1
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(F) *Bulk and area regulations.*

Lot width minimum	150 ft.
Lot area minimum	35,720 Sq. Ft.
Land area per dwelling unit	35,720 Sq. Ft.

(G) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(H) *Building height regulations.*

Building Height Maximum	45 ft.
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Height regulations. Structures in this District are limited to a building height of 45 feet. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses, (ord. # 4858).

(I) *Building area.* None.

(Code 1965, §160.44; Ord. No. 3792, §4, 5-17-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09)

161.17 District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12	Limited business
Unit 25	Offices, studios, and related services

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park*
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities*
Unit 42	Clean technologies

(C) *Density.*

Units per acre	24 or less
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(D) *Bulk and area regulations.*
(Per dwelling unit for residential structures)

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouses:	
Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.

Two-family	6,500 sq. ft.
Three or more	8,000 sq. ft.
Fraternity or Sorority	1 acre

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Townhouses & apartments:	
No bedroom	1,000 sq. ft.
One bedroom	1,000 sq. ft.
Two or more bedrooms	1,200 sq. ft.
Fraternity or Sorority	500 sq. ft. per resident

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Front, in the Hillside Overlay District	15 ft.
Side	10 ft.
Side, when contiguous to a residential district	15 ft.
Side, in the Hillside Overlay District	8 ft.
Rear, without easement or alley	25 ft.
Rear, from center line of public alley	10 ft.
Rear, in the Hillside Overlay District	15 ft.

(F) *Building height regulations.*

Building Height Maximum	60 ft.
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Height regulations. Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot.

(Code No. 1965, App. A., Art. 5(x); Ord. No. 2414, 2-7-78; Ord. No. 2603, 2-19-80; Ord. No. 2621, 4-1-80; Ord. No. 1747, 6-29-70; Code 1991, §160.041; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4726, 7-19-05; Ord. 4943, 11-07-06; Ord. 5079, 11-20-07; Ord. 5195, 11-6-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10)

Bates & Associates, Inc.

Civil Engineering & Surveying

91 W. Colt Square Dr. Suite 3 / Fayetteville, AR 72703
PH: 479-442-9350 * FAX: 479-521-9350

March 2, 2011

Planning Commission
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Bob Daugherty Property Rezoning

Dear Commissioners,

This letter is to fulfill the requirements of item 5 on the rezoning application. We are proposing to rezone the property from RSF-1 to R-O.

- a. Current property owner: Daugherty Goshen Farm, LLC.; there are no pending sales.
- b. The zoning change is needed in order to bring the existing facility on the site into a more conforming use than what the residential zoning allows.
- c. With the Re-alignment of Ripple Road and Mt. Comfort, it is likely that this new intersection will receive the Neighborhood Commercial Zoning in the future.
- d. A 15" sewer main, and 12" force main are located south of the property. An 8" water main is located on the site along the north, as well as a 6" water main along Ripple Road.
- e. With the Re-alignment of Ripple Road and Mt. Comfort, it is likely that this new intersection will receive the Neighborhood Commercial Zoning in the future.
- f. The zoning change is needed in order to use the existing facility.
- g. The existing facility will increase traffic due to the fact it has been abandoned for quite some time. However, with the re-alignment of Ripple Road and Mt. Comfort intersection, the old road accessing this facility will be abandoned and will only be used for access to this property, therefore limiting danger and congestion caused by the old intersection.
- h. The proposed development will NOT alter the population density or undesirably increase the load on public services.
- i. It would be impractical to use the existing facility as a residence due to its size and nature of construction. Neighborhood Commercial zoning appears to be a more appropriate use for the site rather than a residential zoning.

If you have any questions or require additional information, please feel free to call.

Sincerely

Bates & Associates, Inc.



Geoffrey H. Bates, P.E.
President of Engineering

Zoning Review

To: Andrew Garner
From: Captain Mark Stevens
Date: April 5, 2011
Re: RZN 11-3777

This development will be protected by Engine 7 located at 835 N. Ripple Road.

The Fayetteville Fire Department does not currently calculate the number of emergency calls for service for non residential developments.

If you have any questions please feel free to contact me.

Captain Mark Stevens
Assistant Fire Marshal
Fayetteville Fire Department

March 24, 2010

Jeremy Pate
Development Services Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

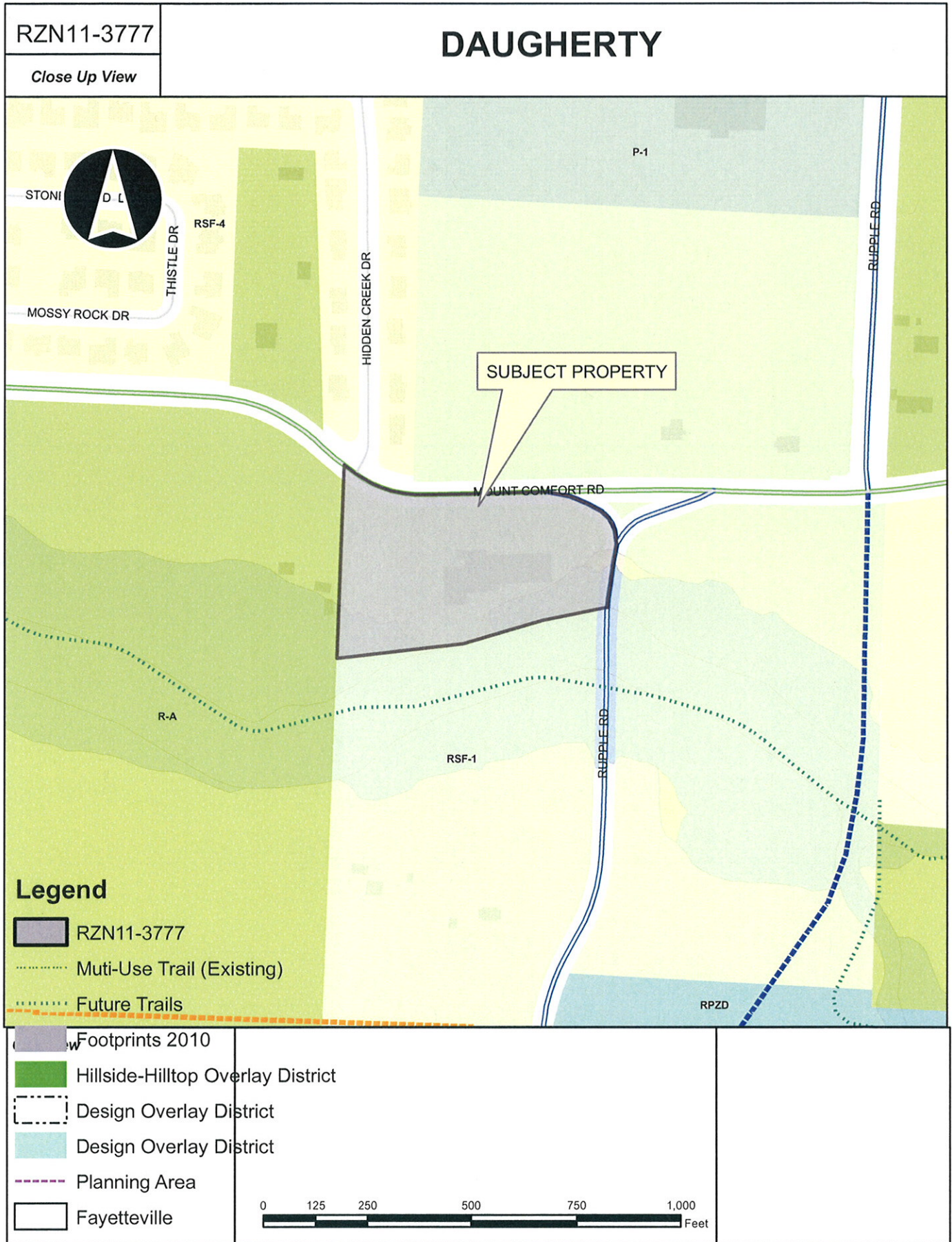
Dear Director Pate,

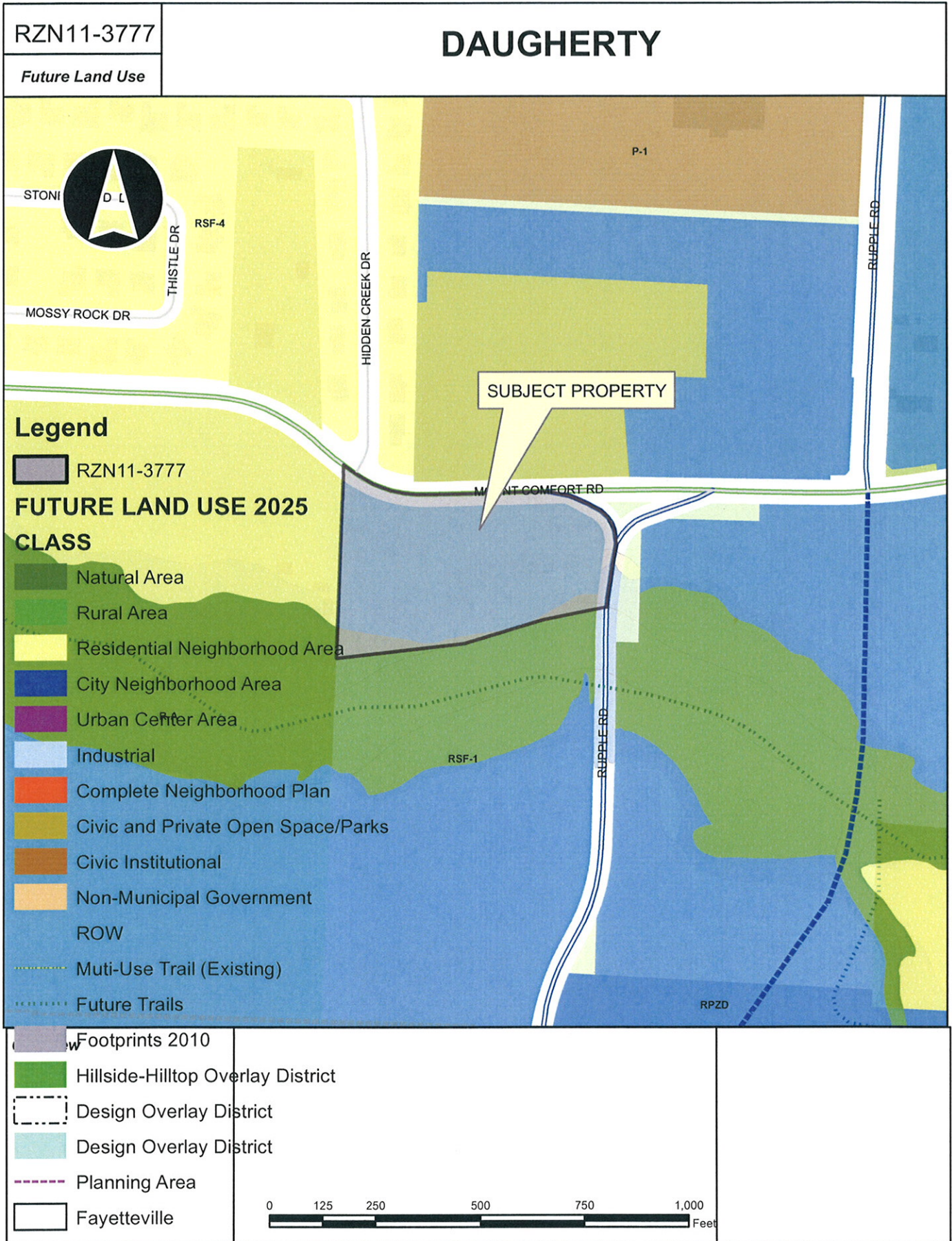
This document is in response to the request comments on the proposed RZN 11-3777: Rezone (2143 N. RUPPLE RD./DAUGHERTY, 361): Submitted by BATES AND ASSOCIATES for property located at 2143 NORTH RUPPLE ROAD.

I do not believe the rezoning of this property will cause any substantial call volume increases or traffic danger and congestion problems.

Sincerely,

Captain William Brown
Fayetteville Police Department

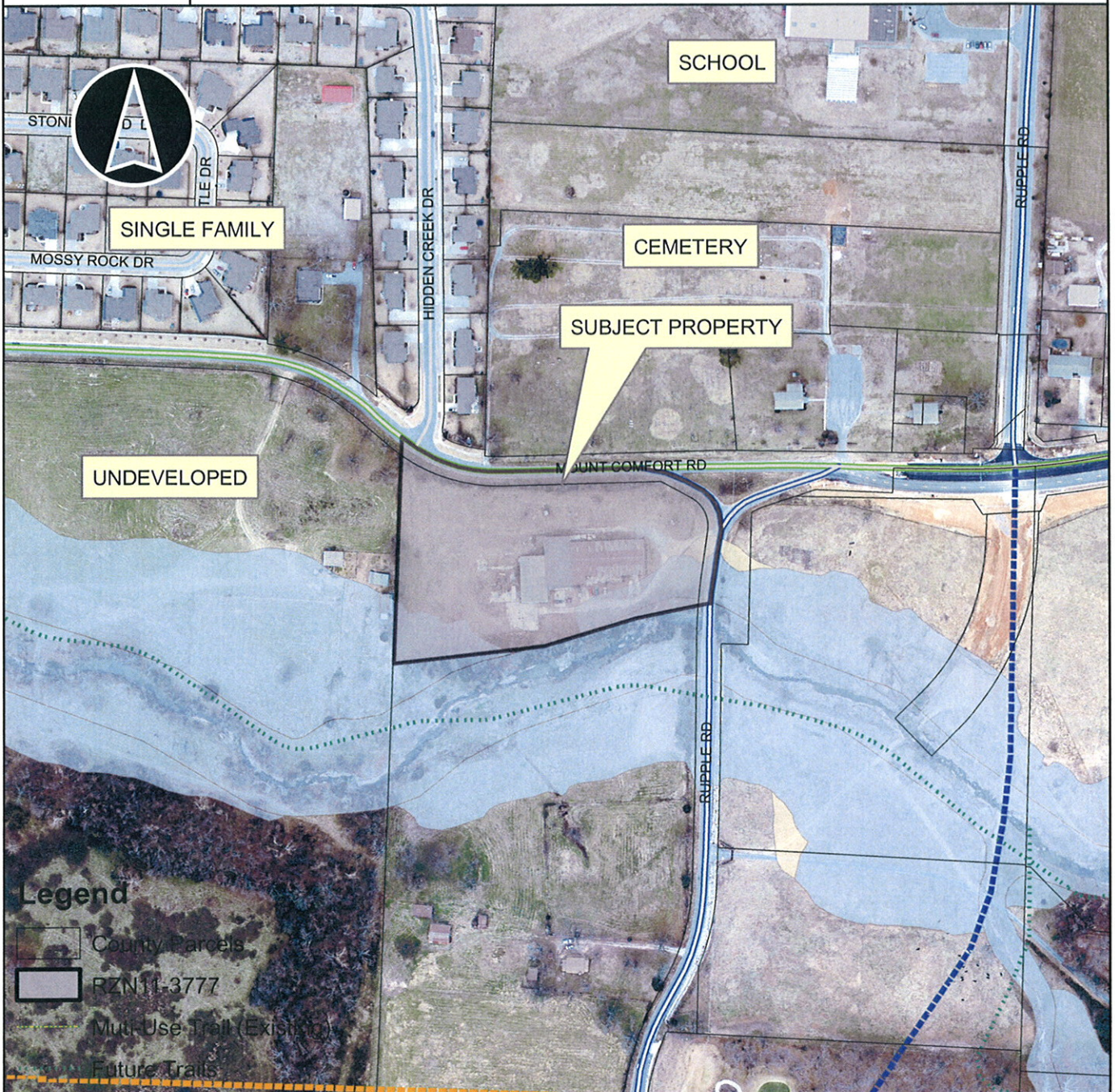




RZN11-3777

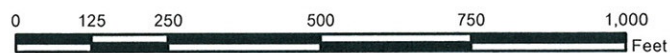
DAUGHERTY

Close Up View



Legend

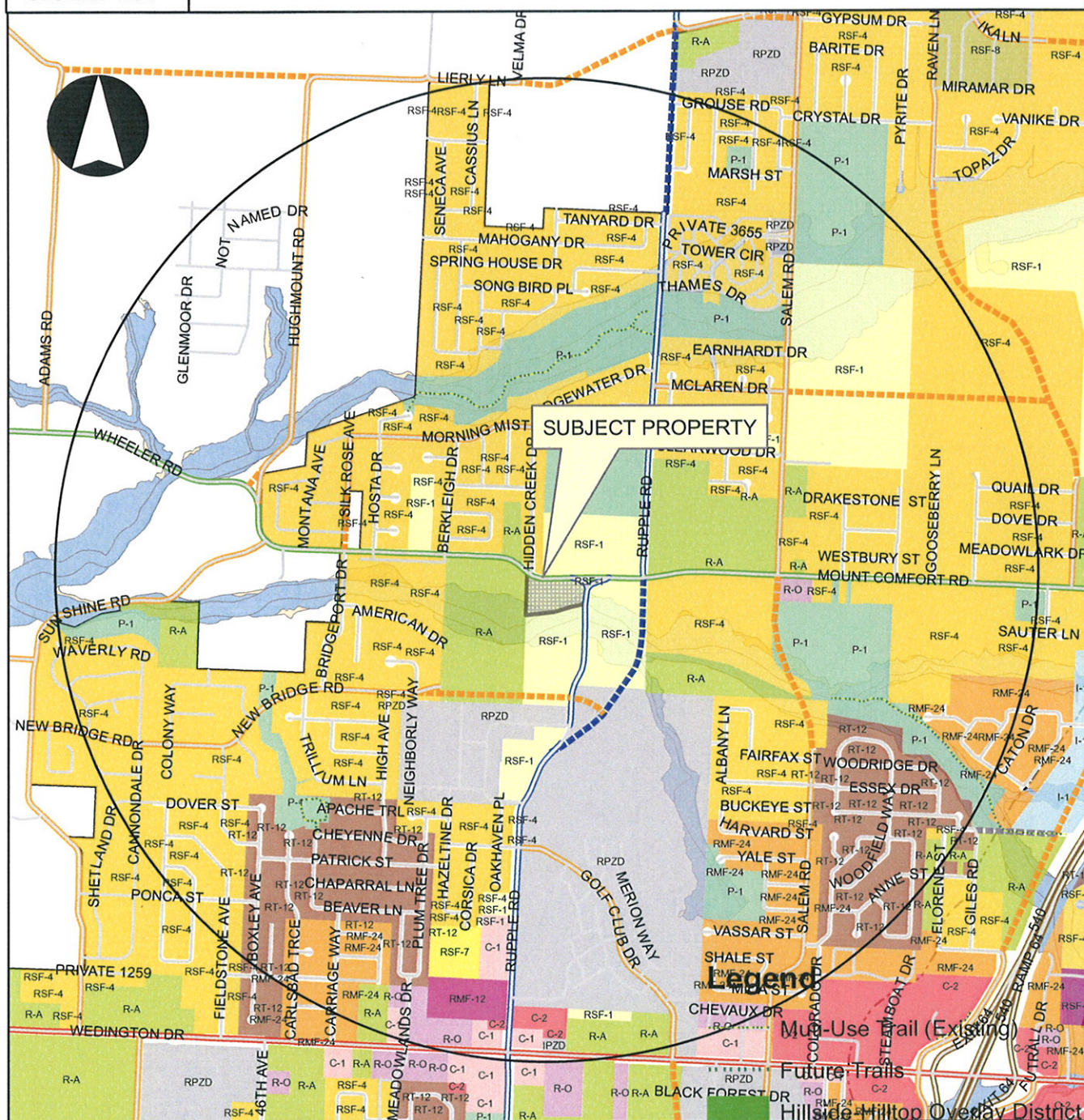
- County Parcels
- RZN11-3777
- Multi-Use Trail (Existing)
- Future Trails
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area
- Fayetteville



RZN11-3777

DAUGHERTY

One Mile View



Overview



Legend

Subject Property

RZN11-3777

Boundary

0 0.25 0.5

1 Miles



RZN11-3777



Design Overlay District



Planning Area



Fayetteville

Future Trails

Hillside Hilltop Overlay District

City of Fayetteville Staff Review Form

C. 2
 VAC 11-3785 (221 W.
 South St./Knight)
 Page 1 of 24

City Council Agenda Items
 and
 Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
 Agenda Items Only

Andrew Garner
 Submitted By

Planning
 Division

Development Services
 Department

Action Required:

VAC 11-3785: 221 W. South St./Knight, 523): Submitted by Kristen Knight for property located at 221 West South Street. The property is zoned DG, Downtown General. The request is to vacate a portion of an un-constructed right-of-way.

_____	\$ _____	_____
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 ☐

James C. Pate
 Department Director 4-15-2011
 Date

Previous Ordinance or Resolution # _____

Kristen Knight
 City Attorney 4-15-2011
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Behn
 Finance and Internal Services Director 4-15-2011
 Date

04-15-11P01:42 RCVD
 Received in City Clerk's Office UDK

Don Mar
 Chief of Staff 4-18-11
 Date

Received in Mayor's Office
 ENTERED
 4/15/11
 PH

Donald Jordan
 Mayor 4/18/11
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Director *JP*

From: Andrew Garner, Senior Planner

Date: April 14, 2011

Subject: VAC 11-3785 (221 W. South Street Right-of-way Vacation)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating an un-constructed right-of-way on the subject property containing approximately 0.03 acres.

BACKGROUND

The subject property is located within the Downtown Master Plan area at the southeast corner of South Street and Locust Avenue, and is developed for a single family residence. The surrounding land use consists of single family residences. There is an approximately 9-foot wide strip of un-constructed right-of-way along the property's Locust Street frontage that is requested to be vacated (0.03 acres). Locust Street currently has 60 feet of existing right-of-way and is designated as an ST-45 Street in the Master Street Plan requiring only 45 feet of right-of-way. The subject area of right-of-way is not anticipated to be needed by the City for transportation purposes because 22.5 feet from centerline right-of-way for Locust Street would remain in accordance with the Master Street Plan's designation of Locust as an ST-45 Street.

The applicant's request is to vacate the excess right-of-way for Locust Street along their western property line, reducing the right-of-way width to 22.5 feet from centerline, consistent with the Master Street Plan. The applicant's intent is to construct an addition onto their home into a portion of this area of the site.

DISCUSSION

The applicant has submitted the required notification forms to the utility companies and to the City water, sewer, engineering, solid waste, and transportation divisions with no objections to the vacation of the easement. On April 11, 2011 the Planning Commission unanimously forwarded this request to the City Council with a recommendation for approval.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 11-3785 SUBMITTED BY KRISTEN KNIGHT FOR PROPERTY LOCATED AT 221 WEST SOUTH STREET TO VACATE A PORTION OF AN UN-CONSTRUCTED RIGHT-OF-WAY, A TOTAL OF 0.03 ACRES.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the un-constructed right-of-way is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following right-of-way as described in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the following Condition of Approval and shall not be in effect until this condition is met:

“Any relocation of existing utilities shall be at the owner/developer’s expense.”

PASSED and **APPROVED** this day of , 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

C. 2
VAC 11-3785 (221 W.
South St./Knight)
Page 4 of 24

EXHIBIT "B"
VAC 11-3785

LEGAL DESCRIPTION (PORTION TO BE VACATED):

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S89°53'41"W 175.99' FROM THE NORTHEAST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE S00°04'54"W 150.21', THENCE S89°52'43"W 9.41', THENCE N00°27'52"E 150.22', THENCE N89°53'41"E 8.41' TO THE POINT OF BEGINNING, CONTAINING 0.03 ACRES MORE OR LESS.



PC Meeting of April 11, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~March 18, 2011~~ Updated April 14, 2011

VAC 11-3785: Vacation (221 W. SOUTH ST./KNIGHT, 523): Submitted by KRISTEN KNIGHT for property located at 221 W. SOUTH STREET. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.18 acre. The request is to vacate 0.03 acres of un-constructed right-of-way.

Planner: Andrew Garner

Findings:

Property Description and Background: The subject property is located within the Downtown Master at the southeast corner of South Street and Locust Avenue, and is developed for a single family residence. The surrounding land use consists of single family residences.

There is an approximately 9-foot wide strip of un-constructed right-of-way along the property's Locust Street frontage that is requested to be vacated (0.03 acres). Locust Street currently has 60 feet of existing right-of-way and is designated as an ST-45 Street in the Master Street Plan requiring only 45 feet of right-of-way. The subject area of right-of-way is not anticipated to be needed by the City for transportation purposes because 22.5 feet from centerline right-of-way for Locust Street would remain in accordance with the Master Street Plan's designation of Locust as an ST-45 Street.

Request: The applicant's request is to vacate the excess right-of-way for Locust Street along their western property line, reducing the right-of-way width to 22.5 feet from centerline, consistent with the Master Street Plan. The applicant's intent is to construct an addition onto their home into a portion of this area of the site.

Right-of-way Vacation Approval: The applicant has submitted the required right-of-way vacation notification forms to the utility companies and to the City with the result summarized below.

UTILITIES

RESPONSE

Ozarks Electric	No Objections
Cox Communications	No Objections
Southwestern Electric Power Company	No Objections
Arkansas Western Gas	No Objections
AT&T	No Objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer	No Objections
Transportation	No Objections
Solid Waste	No Objections
Engineering	No Objections

Public Comment: No public comment has been received.

Recommendation: Staff recommends forwarding **VAC 11-3785** to the City Council with a recommendation for approval subject to the following condition:

1. Any damage or relocation of utilities shall be at the owner/developer's expense.
-

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

Date: April 11, 2011

Motion: Winston

Second: Cook

Vote: 6-0-0

Note: _____

March 2, 2011

Fayetteville Planning Commission
100 W. Mountain Street
Fayetteville, AR 72701

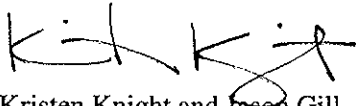
RE: RIGHT OF WAY VACATION FOR 221 W. SOUTH ST.

Dear Commissioners,

In preparation for the restoration and addition to our 1923 home on the corner of South St. and Locust Ave, we had a survey prepared by Bates Engineering. Our survey indicated that the Right of Way along Locust Ave is 60' which places the property line well beyond the existing fence we had intended to replace with a privacy fence during the renovation. We had planned the addition along the West side that faces Locust Ave so to avoid an existing sewer line that runs across this property just South of the existing 960 SF home. Based on the width needed for the addition to work and the angle the home sits in respect to the ROW line, the front corner of the proposed addition exceeds the current Right of Way by approximately one foot.

The proposed land to be vacated is a sloped area that contains no utilities. We request that the Right of Way along Locust Avenue be reduced to the Master Street Plan recommendation of 45'. We appreciate your consideration on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kristen Knight and Jason Gill', written over the printed names.

Kristen Knight and Jason Gill

221 W. South St.
Fayetteville, AR 72701

Petition to Vacate a Right of Way

PETITION TO VACATE A RIGHT OF WAY LOCATED IN PT Lot 1 50 x 150 Block 1 McCrimmons Addition, CITY OF FAYETTEVILLE, ARKANSAS

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the Right of Way hereinafter sought to be abandoned and vacated, lying in, PT Lot 1 50 x 150 Block 1 McCrimmons Addition, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a Right of Way which is described as follows:

LEGAL DESCRIPTION (PORTION TO BE VACATED):

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S89°53'41"W 175.99' FROM THE NORTHEAST CORNER OF SAID FORTY ACRE TRACT AND RUNNING THENCE S00°04'54"W 150.21', THENCE S89°52'43"W 9.41', THENCE N00°27'52"E 150.22', THENCE N89°53'41"E 8.41' TO THE POINT OF BEGINNING, CONTAINING 0.03 ACRES MORE OR LESS.

There are no adjacent property owners that will be affected by the Vacation of this Right of Way. The public interest and welfare would not be adversely affected by the abandonment of the portion of the above described Right of Way.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

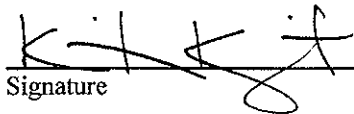
The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said alley.

Dated this 2 day of March, 2011.

Kristen Knight

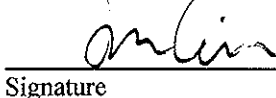
Printed Name



Signature

Jason Gill

Printed Name



Signature

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: City of Fay (Transportation)

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834

REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Terry J. Muller
Signature of Utility Company Representative

TRANS. Services Dir.
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: City of Fayetteville - Water & Sewer

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~X Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:


Signature of Utility Company Representative

Utilities Engineer
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: COX COMMUNICATIONS

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834
REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

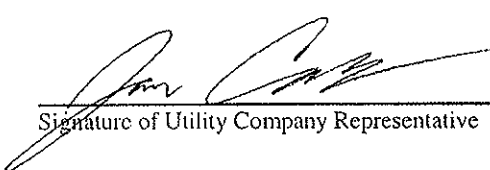
221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

ANY DAMAGE OR RELOCATION OF EXISTING FACILITIES WILL BE AT THE DEVELOPER'S EXPIENCE.



Signature of Utility Company Representative

FIELD ENGINEERING

Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: At&T

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834
REQUESTED VACATION (applicant must check all that apply):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

RELOCATION OF OR DAMAGE TO EXISTING ATT/SWBT
FACILITIES WILL BE CARED FOR AT THE ^{PROPERTY} OWNERS EXPENSE

Susan K. Clouser
Signature of Utility Company Representative

OSP DESIGN ENGINEER
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: AEP - SWEPCO

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834
REQUESTED VACATION (applicant must check all that apply):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

Joshua Bayne
Signature of Utility Company Representative

Distribution Engineer
Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: Arkansas Western GAS

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834

REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

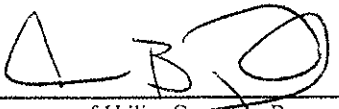
General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- No objections provided the following conditions are met:

 Cameron Bingham
Signature of Utility Company Representative

Director Asset Operations
Title

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: OZARKS ELECTRIC

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834
REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

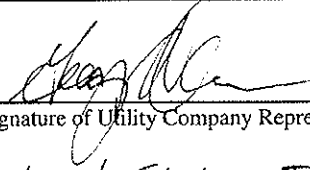
General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:



Signature of Utility Company Representative

Lead Staking Tech

Title

UTILITY APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: 2/22/11

UTILITY COMPANY: Solid Waste & Recycling

APPLICANT NAME: Kristen Knight APPLICANT PHONE: 479-409-7834

REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

221 W. South St. Fayetteville, AR 72701 Survey and legal description attached

UTILITY COMPANY COMMENTS:

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

- ☐ No objections provided the following conditions are met:

Brian Pugh

Signature of Utility Company Representative

Waste Reduction Coordinator

Title

R/W VACATION EXHIBIT

FIELD WORK:
JANUARY 10 & 12, 2011

BASIS OF BEARING:
WARRANTY DEED FILED IN
BOOK 2006 AT PAGE 47279

REFERENCE DOCUMENTS:
(1) WARRANTY DEED FILED IN
BOOK 2003 AT PAGE 14207
(2) WARRANTY DEED FILED IN
BOOK 2003 AT PAGE 25895
(3) WARRANTY DEED FILED IN
BOOK 2006 AT PAGE 47279
(4) ORIGINAL TOWN PLAT OF FERGUSON'S
ADDITION FILED IN PLAT BOOK 4 AT PAGE 4

PROPERTY ZONED:
DG - DOWNTOWN GENERAL

BUILDING SETBACKS:
FRONT 25ft BUILD-TO ZONE
SIDE 0ft
REAR 5ft

SURVEY DESCRIPTION:
A PART OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 16,
TOWNSHIP 16 NORTH, RANGE 30 WEST,
WASHINGTON COUNTY, ARKANSAS, BEING
MORE PARTICULARLY DESCRIBED AS FOLLOWS,
TO-WIT: BEGINNING AT AN EXISTING REBAR
WHICH IS S89°53'41"W 127.84' FROM THE
NORTHEAST CORNER OF SAID FORTY ACRE
TRACT AND RUNNING THENCE S05°14'03"E 150.80',
THENCE S89°52'43"W 62.12' TO AN EXISTING
REBAR ON THE EAST RIGHT-OF-WAY OF LOCUST
AVE., THENCE ALONG SAID RIGHT-OF-WAY
N00°04'54"E 150.21', THENCE LEAVING SAID
RIGHT-OF-WAY N89°53'41"E 48.15' TO THE POINT
OF BEGINNING, CONTAINING 0.19 ACRES MORE
OR LESS. SUBJECT TO ALL EASEMENTS AND
RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PORTION TO BE VACATED):
A PART OF THE SOUTHWEST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 16
NORTH, RANGE 30 WEST, WASHINGTON COUNTY,
ARKANSAS, BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A
POINT WHICH IS S89°53'41"W 175.99' FROM THE
NORTHEAST CORNER OF SAID FORTY ACRE TRACT
AND RUNNING THENCE S00°04'54"W 150.21', THENCE
S89°52'43"W 9.41', THENCE N00°27'52"E 150.22',
THENCE N89°53'41"E 8.41' TO THE POINT OF
BEGINNING, CONTAINING 0.03 ACRES MORE OR
LESS.

VICINITY MAP



VICINITY MAP NOT TO SCALE

DRAWING # 11-001

FOR USE AND BENEFIT OF:
KRISTEN KNIGHT

ADDRESS:
**221 W. SOUTH ST
FAYETTEVILLE, ARKANSAS**

DATE: 01/14/2011
LOCATION:
SEC. 16
T-16-N, R-30-W

SCALE: 1"=30'
SURVEYED: JY
DRAFTED: JY
REVIEWED: DT

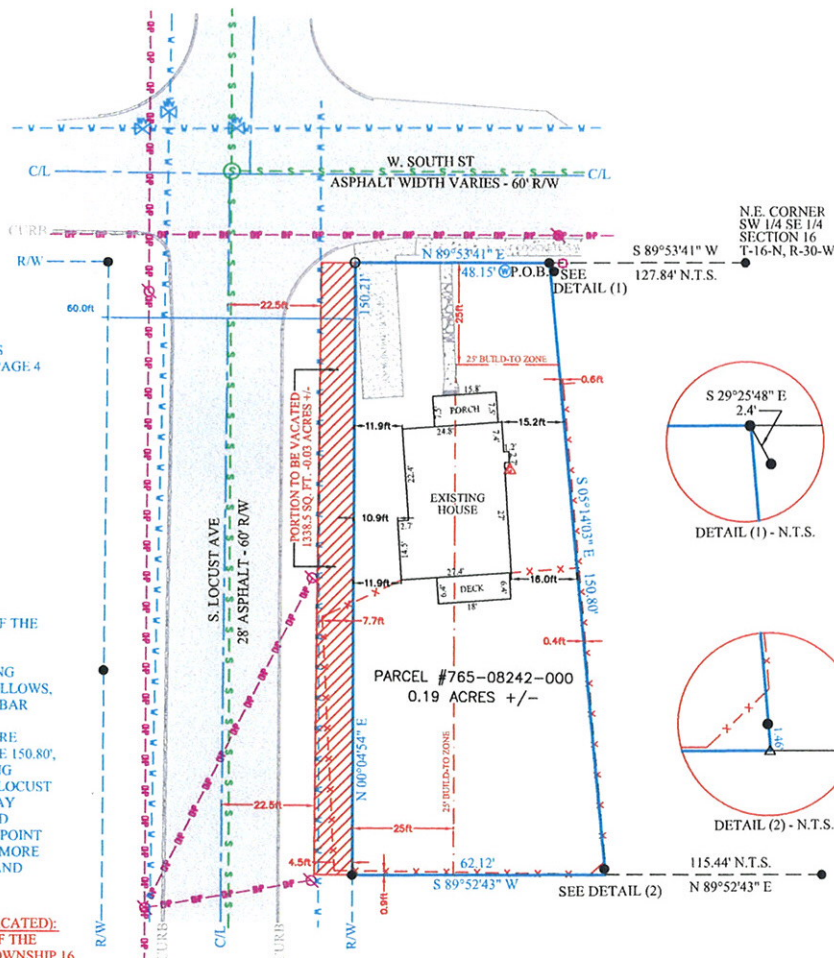


**Bates &
Associates, Inc.**
Civil Engineering & Land Surveying
91 W. Calk Square Dr. Fayetteville, Arkansas 72703 479.442.8260 Fax 479.521.8500

BATES & ASSOCIATES, INC. Copyright 2011
This survey was conducted for the person or persons whose name(s) appear on this plat. This plat is
protected by copyright. No one, including the person(s) named may reproduce this plat without the
express written consent of Bates & Associates, Inc. Surveyor has made no independent
investigation for encumbrances of record, circumstances, restrictive covenants, ownership title,
evidence, or any other fact which a complete and accurate title search may disclose. Any flood
statement provided on this plat is for information only and Bates & Associates, Inc. assumes no
liability for the correctness of the horizon data maps, furthermore the above statement does not
represent the opinion of Bates & Associates, Inc. of the probability of flooding.

LEGEND:

- THESE STANDARD SYMBOLS WILL
BE FOUND IN THE DRAWING
- FOUND 1/2" REBAR
 - SET 5" REBAR-CAP
 - WATER METER
 - POWER POLE
 - GAS METER
 - SANITARY SEWER MH
 - ELECTRICAL PEDISTAL
 - WATER VALVE
 - BOUNDARY LINE
 - CORNER TIES
 - CENTERLINE OF ROAD
 - RIGHT-OF-WAY
 - BUILDING SETBACK
 - FENCE
 - WATER LINE (APPROX. LOC.)
 - SEWER LINE (APPROX. LOC.)
 - OVERHEAD POWER LINE



NOTE:
THE LOCATION OF UTILITIES SHOWN HEREON
ARE FROM OBSERVED EVIDENCE OF ABOVE
GROUND APPURTENANCES. ALL UTILITY LINES
APPEARING ON THIS PLAT, AS WELL AS THOSE
THAT MAY EXIST UNDERGROUND NEED TO BE
VERIFIED PRIOR TO DOING ANY TYPE OF
EXCAVATION. SOME UTILITY LINES MAY ALSO
EXIST THAT WERE NOT SHOWN ON THIS PLAT.

9b ST 45 8/10/9

Design Service Volume:

Traffic Lanes:

Parking:

Paved Width:

Right of Way:

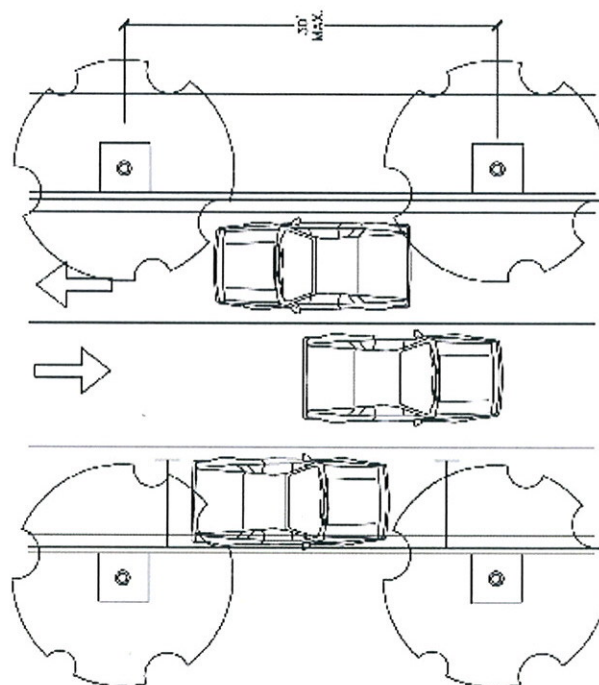
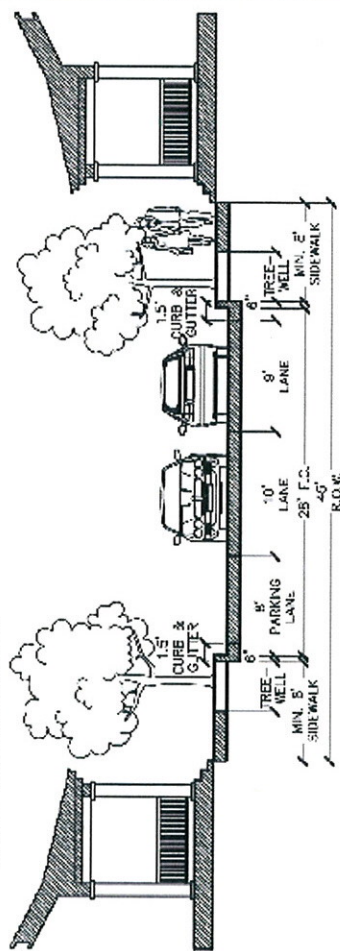
Sidewalks:

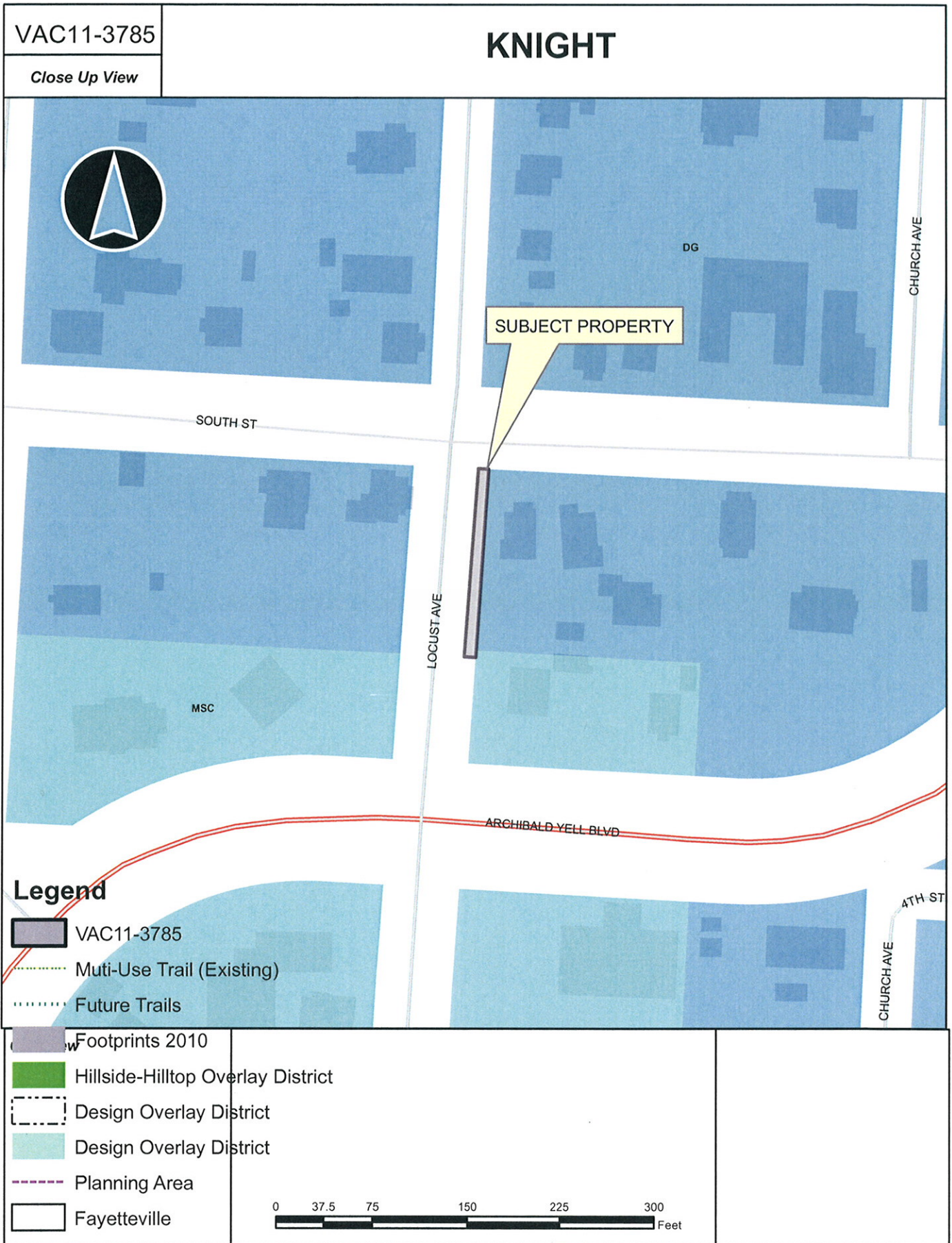
Greenspace:

ST 45 8/10/9

DMP

STREET TWO LANE URBAN

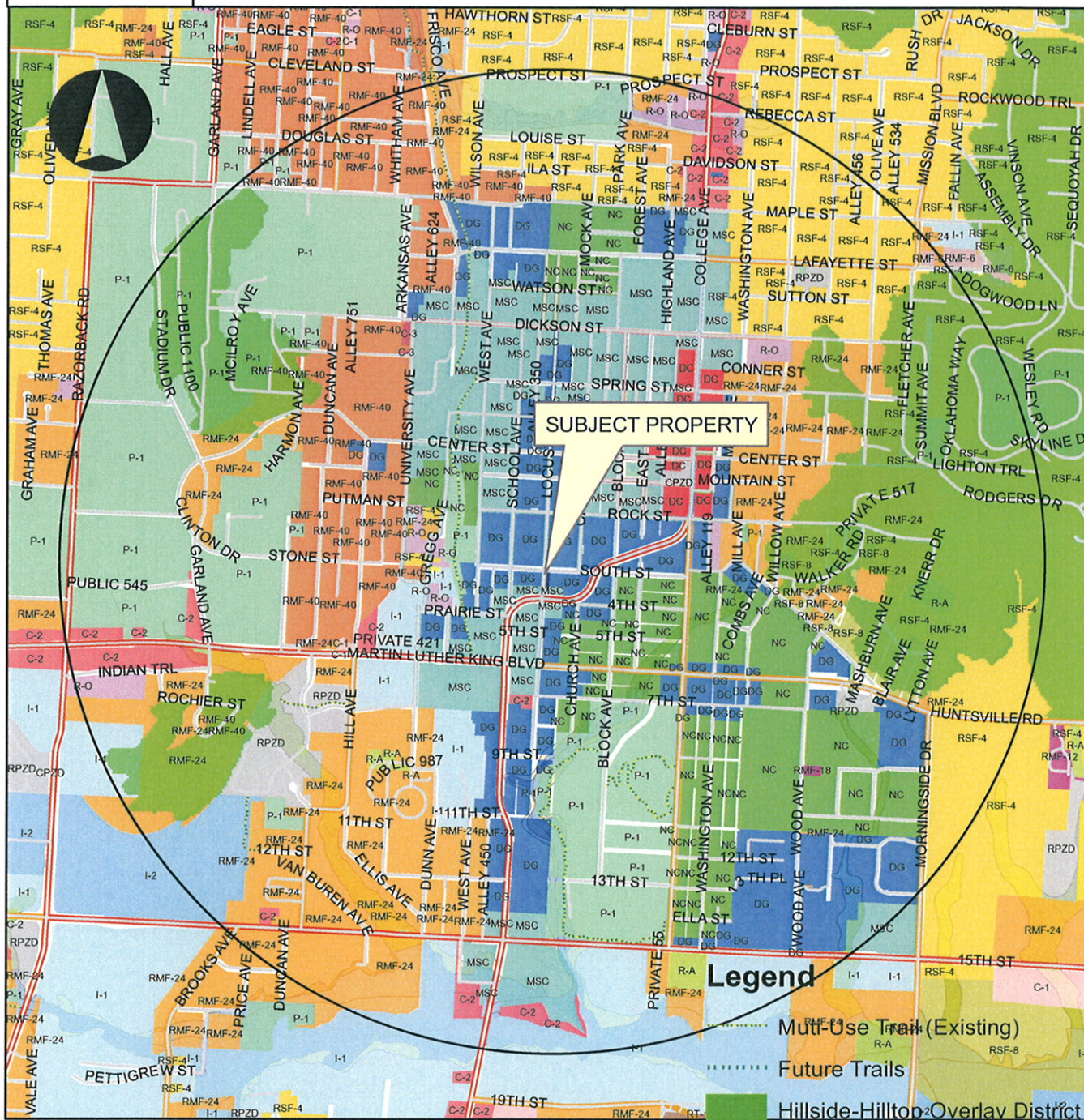




VAC11-3785

KNIGHT

One Mile View



Overview



Legend

Subject Property

VAC11-3785

Boundary

0 0.25 0.5

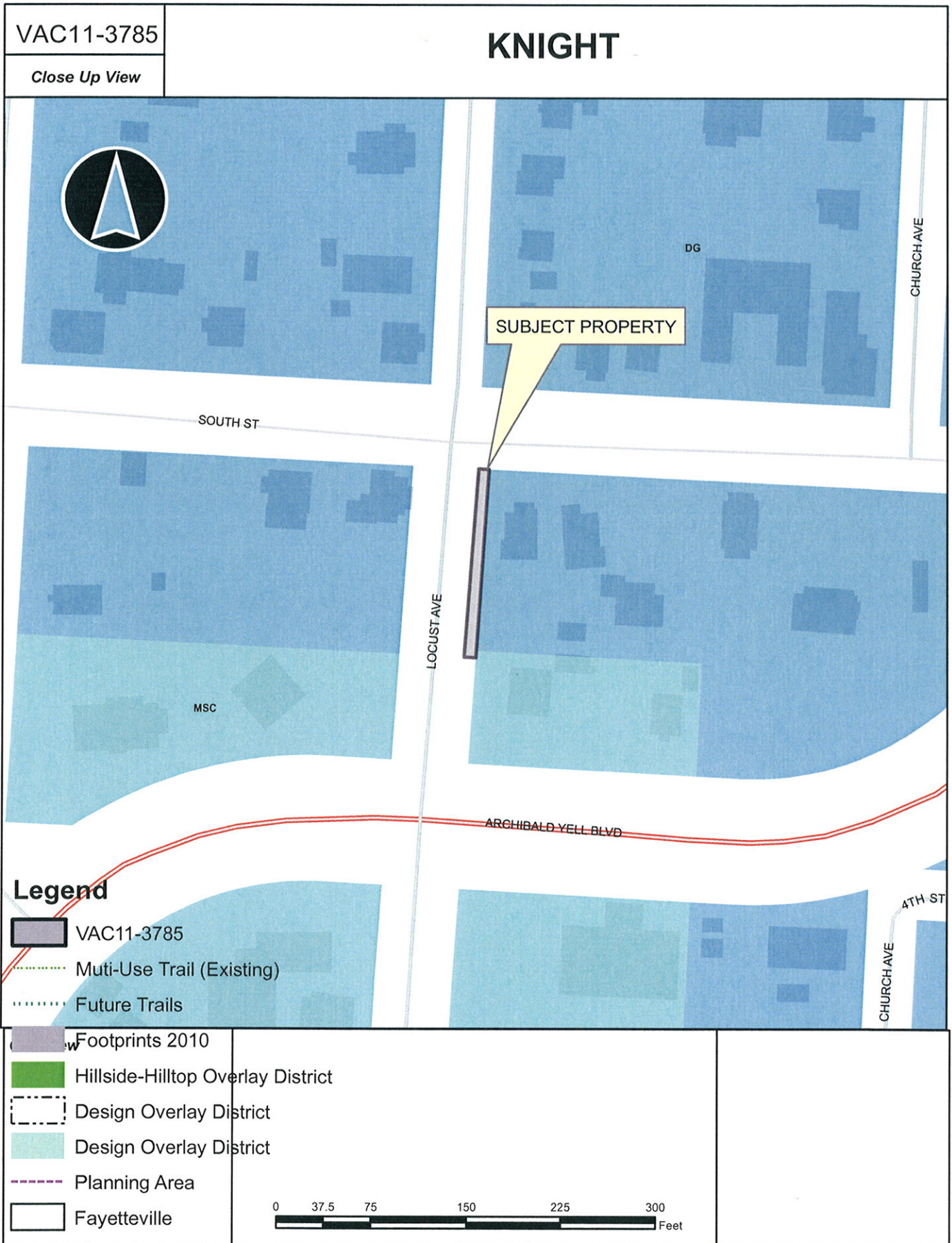
VAC11-3785

Design Overlay District

Planning Area

Fayetteville

1 Miles



1 Miles

AGENDA REQUEST

FOR: COUNCIL MEETING OF MAY 3, 2011

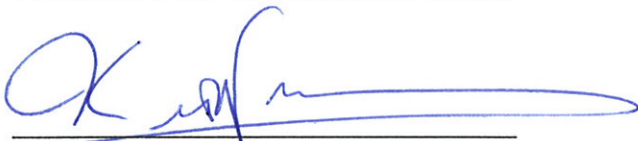
FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend Ordinance No. 2990 Of March 6, 1984 To Acknowledge That Some Fayetteville Citizens And Businesses Are Now Within The Prairie Grove Telephone Company Franchise Area And To Apply The Same Franchise Fee To Both Telephone Companies, To Amend Ordinance No. 4278 Of November 21, 2000 And To Codify These Combined Ordinances

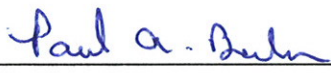
APPROVED FOR AGENDA:



City Attorney

4-19-2011

Date



Finance Director

4-19-2011

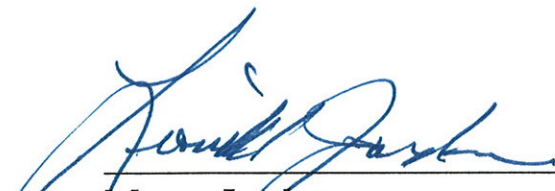
Date



Chief of Staff

4-20-11

Date



Mayor Jordan

4/19/11

Date



04-19-11P04:42 RCVD



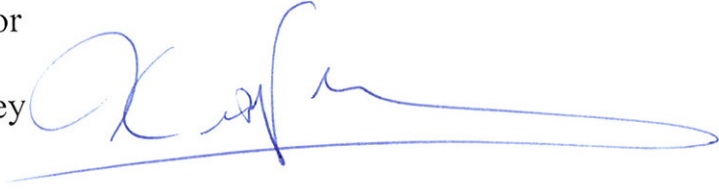
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney



DATE: March 10, 2011

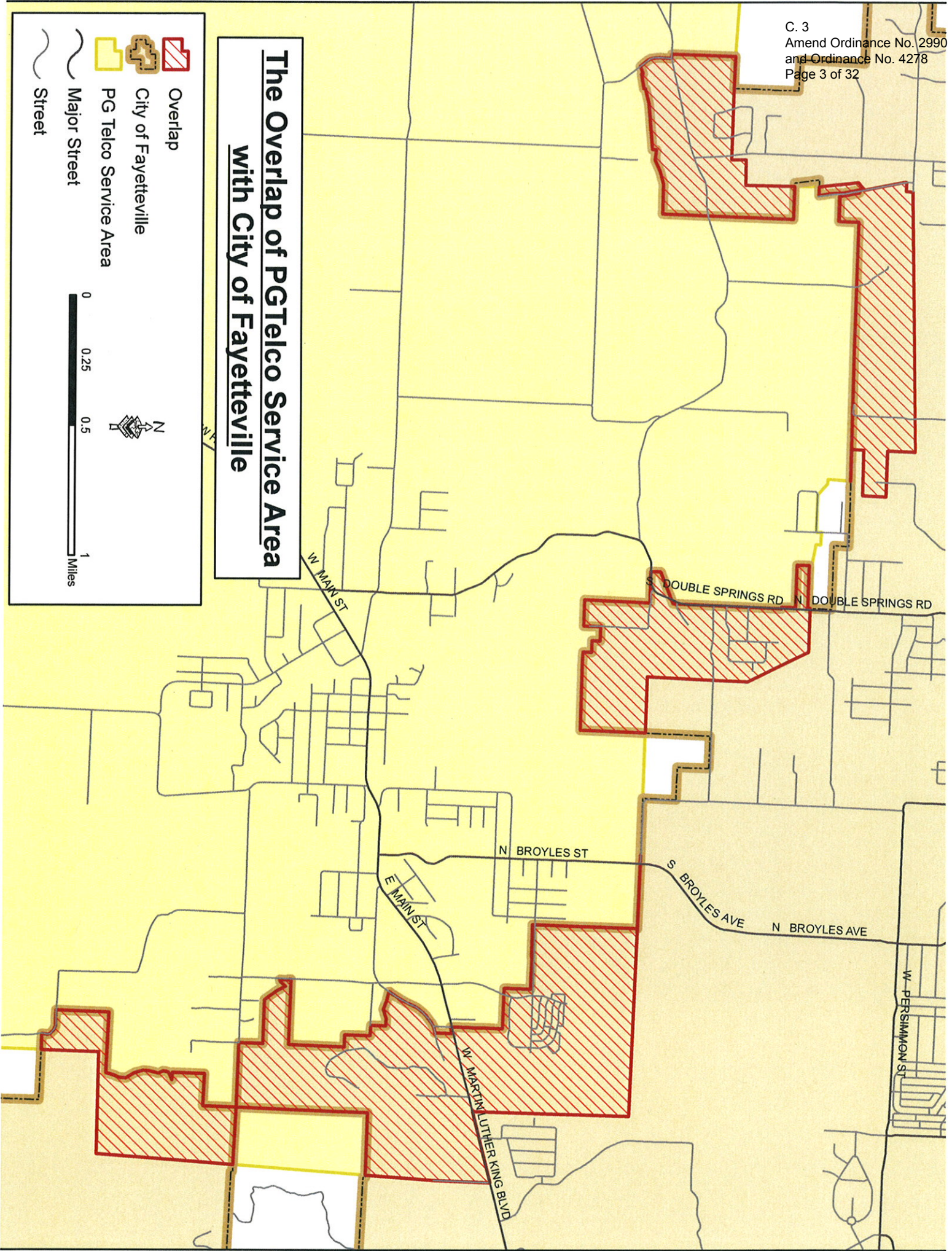
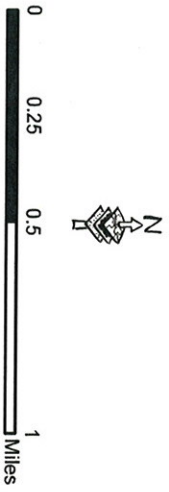
**RE: Applying a uniform franchise fee for all telephone companies providing
basic local exchange service to Fayetteville residents and businesses**

For most of Fayetteville's history, we have been served by a single telephone company, Southwestern Bell (now AT&T). Recently, however, our westward annexations extended our corporate limits into the Prairie Grove Telephone Company's service area. Therefore, to ensure equal treatment, we need to pass an ordinance requiring the same 4% franchise fee from the Prairie Grove Telephone Company serving Fayetteville customers as we do for AT&T which serves the vast majority of Fayetteville customers.

A.C.A. §14-200-101 in the **Municipal Authority Over Utilities** chapter of the Arkansas Code authorizes the City Council to impose a franchise fee of up to 4 ¼%. Since 1984, the City has charged 4% which now should be extended to the Prairie Grove Telephone Company which we believe is now serving slightly less than 100 customers within Fayetteville. That way all citizens and businesses in Fayetteville will be treated equally.

The Overlap of PGTelco Service Area with City of Fayetteville

-  Overlap
-  City of Fayetteville
-  PG Telco Service Area
-  Major Street
-  Street



ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 2990 OF MARCH 6, 1984 TO ACKNOWLEDGE THAT SOME FAYETTEVILLE CITIZENS AND BUSINESSES ARE NOW WITHIN THE PRAIRIE GROVE TELEPHONE COMPANY FRANCHISE AREA AND TO APPLY THE SAME FRANCHISE FEE TO BOTH TELEPHONE COMPANIES, TO AMEND ORDINANCE NO. 4278 OF NOVEMBER 21, 2000 AND TO CODIFY THESE COMBINED ORDINANCES

WHEREAS, the Fayetteville Board of Directors passed Ordinance No. 2892 on February 15, 1983 authorizing Southwestern Bell Telephone Company and its successors to continue to operate in Fayetteville and use our public rights-of-way for its lines and charged a franchise fee for such usage; and

WHEREAS, the Fayetteville Board of Directors passed Ordinance No. 2990 on March 6, 1984, which amended the first two sections of Ordinance No. 2892 and specified a franchise rate of four percent (4%); and

WHEREAS, on November 21, 2000, the Fayetteville City Council passed Ordinance No. 4278, an eighteen page, complex telecommunications franchise fee application ordinance which also set the franchise fee at four percent (4%); and

WHEREAS, after the City of Fayetteville's western annexation, our city limits extended into the Prairie Grove Telephone Company's authorized service area such that we need to authorize its use of our rights-of-way and establish an identical franchise rate of four percent (4%) for telephone services provided to those Fayetteville citizens and businesses.

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 Ordinance No. 2990 by deleting the first sentence of its Section 1 and enacting a replacement sentence as follows:

“Section 1: AT&T and the Prairie Grove Telephone Company and their successors and assigns are authorized to continue to operate their telephone businesses and all businesses incidental to or connected with the conducting of a telephone business and system within the City of Fayetteville, Arkansas.”

All of the remaining language of Section 1 remains unchanged except references to a singular telephone company will now relate to both telephone companies.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals Ordinance No. 4278, but enacts substantial portions of it in the renamed **Chapter 110: Telecommunication Franchises and Billposting** as shown on Exhibit A attached.

PASSED and **APPROVED** this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT "A"

CHAPTER 110: TELECOMMUNICATION FRANCHISES AND BILLPOSTING

110.01 Billposting

(A) The posting of any bills, notices, or advertisements of any kind whatever upon any electric light, telephone, or telegraph pole within the limits of the city is hereby prohibited.

(B) It shall be unlawful for any person to post, stick, paint or otherwise attach (or cause to be posted, stuck, painted, or caused to be otherwise attached) any bill sign, notice, poster, or other advertisement to any building, fence, wall, vehicles, or other property, public or private, without first having obtained permission from the owner of such property.

(Code 1965, §§13-2, 13-3; Ord. No. 241, 9-11-1908; Ord. No. 3773, §1, 4-5-94; Code 1991, §110.01)

110.02 Telecommunication Franchises

(A) **Definitions.** As used in §110.02 the following terms shall have the meanings set out:

"Applicant" means a telecommunications provider or telecommunications lessee that applies for a franchise or license pursuant to this section.

"Franchise fee" means compensation paid to the City by the telecommunications provider or lessee in exchange for the use of the City's streets to deliver telecommunications services

"Gross revenues" means all revenues from basic local service, excluding, among other things, extension, terminal equipment, toll, access, yellow pages, and other miscellaneous equipment revenues pursuant to Arkansas Code Ann. §14-200-101.

"Person" means any individual, resident, citizens, business firm, corporation, partnership, governmental agency, or institution.

"Streets" means all streets, roads, highways, alleys, rights-of-way, public utility easements, public property, public ways and air space over such streets, roads, alleys, public rights-of-way, public utility easements, public property and public ways located within the geographic limits of Fayetteville.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received.

"Telecommunications facilities" or "facilities" means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable) and appurtenances owned or utilized by a

telecommunications provider or telecommunications lessee and located in, under or over the Streets of the City and utilized in the provision of telecommunications services.

"Telecommunications lessee" or "lessee" means any person, firm, corporation, partnership, or other business entity, including "resellers," that provides telecommunications services within the geographic boundaries of Fayetteville, including long-distance services that originate or terminate in the City, but utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the City and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the City shall be classified as a telecommunications provider under the terms of this section.

"Telecommunications provider" or "provider" means any person, firm, corporation, partnership or other business entity, other than the City of Fayetteville, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

"Telecommunications services" or "services" means any service delivering telecommunications by a telecommunications provider or lessee that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include "cable service" as defined by the Cable Communications Policy Act of 1984, as amended by the Cable television Consumer Protection and Competition Act of 1992, 47 U.S.C. §521 *et seq.*, the Telecommunications Act of 1996, and subsequent acts.

"Transmission line" means a telecommunications facility that is used solely for the purpose of transmitting signals from one point to another point and does not include a line for the purpose of delivering telecommunications services to any person in Fayetteville.

(B) **Requirement of City's Consent.**

Every telecommunications provider and telecommunications lessee that utilize a telecommunications facility must obtain a franchise or license from the City in accordance with §110.02 in order to provide telecommunications services. Prior to providing any telecommunications facility, or utilizing any telecommunications facility, the provider

or lessee must agree in writing to comply with the terms and conditions of this section and enter into a franchise agreement or license agreement.

(C) Application Process.

Any telecommunications provider or lessee (who has not yet been awarded a franchise such as AT&T and the Prairie Grove Telephone Company) seeking to utilize the Streets to provide telecommunications service shall complete a brief application form approved by the Department of Transportation Services. Such application form shall briefly describe the general nature of the service to be provided, the type of construction or use of the facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

1. The Applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license. The provision of authorization from the Arkansas Public Service Commission shall be deemed satisfactory evidence of these qualifications.

2. In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors to the extent not already considered by the Arkansas Public Service Commission:

a) the Applicant's financial ability to pay the compensation and fees required by this Ordinance;

b) the Applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;

c) the Applicant's compliance with the terms and conditions of federal, state and local law including applicant's compliance in other jurisdictions in which it operates;

d) the capacity of the Streets to accommodate the Applicant's proposed facilities;

e) the damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;

f) the public interest in minimizing the cost and disruption of construction in, on, under and above the streets;

g) the effect of public health, safety or welfare if a franchise or license is granted;

h) the availability of alternate routes and/or locations for the proposed facilities;

i) whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the Applicant to provide any interstate or intrastate telecommunications services; and

j) any other factor relating to whether the grant of a franchise or license impinges on the City's right to manage its Streets.

(D) Franchise or License Agreement.

1. As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

2. The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this section as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

(E) Construction Maintenance.

1. Construction Application. Prior to the beginning construction, excluding routine maintenance or emergency repair, of any telecommunications facility, the Telecommunications Company shall apply to the Department of Transportation Services of the City for permission to carry out construction activities in the City's Streets, and shall comply with all requirements of that department and all applicable ordinances or code sections.

2. Construction Plan. Prior to beginning construction, as defined above, the Applicant shall submit a plan describing the proposed construction. The plan shall specify:

a) The design of any telecommunications facilities to be construction or utilized;

b) A map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;

c) A description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;

d) The timetable for completion of construction, including any phases of construction;

e) Such other information as well provide the City with pertinent information relating to the construction of the telecommunications facilities,

including any pertinent information requested by the City.

3. **Prior Authority.** Prior to beginning construction, the Applicant shall have received all necessary regulatory authority to construction a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.

4. **Standards of Construction.** The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous conditions on the Streets. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, upon thirty (30) days advance written notice, at its own cost and expense, promptly correct all such conditions.

5. **Maintenance and Repair.** Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this section or the franchise agreement or license agreement.

6. **Minimal Disruption.** Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's Streets, traffic, residences, businesses and institutions. The provider shall at all times endeavor to use trenchless technology in appropriate circumstances.

7. **Restoration.** Any disturbance of the City's Streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition at least as good as that prevailing before the work causing such disturbance was commenced.

8. **Location of Facilities.** New poles and other new facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.

9. **Burial of Transmission Lines.** A telecommunications provider shall place its transmission line or other facilities underground where feasible and desirable from an aesthetic perspective.

10. **Co-location; Sharing of Pole Space.** To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or expanding an existing line or facility, shall utilize existing facilities or place its facilities underground. The owner of any existing facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.

11. **Movement of Facilities.** A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities located in the Streets at its own expense when required by the City by reason of traffic conditions, public safety, or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the City to provide utility service utilizing the City's Streets. If a private entity is required by City to modify or affect the Streets, that entity shall compensate the provider for its costs for the disconnection or relocation of any of the provider's facilities. Provider shall be notified by said private entity as soon as practical of any plan affecting provider's facilities.

12. **Tree Trimming.** A telecommunications provider is authorized to trim trees in the City's Streets to the extent necessary to properly maintain its transmission line or other facility, but prior to major trimming projects, it shall provide at least 24 hours' notice to the Fayetteville Urban Forester. The City, at its option, may choose to supervise such tree trimming. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

13. **Curb Cuts.** No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Transportation Services.

(F) Performance Bond.

1. Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated to the construction plan the provider has filed with the City pursuant to Section (E)(2). The bond shall be equivalent to ten percent (10%) of the total cost of the construction as provided in the construction plan, or \$25,000.00, whichever is greater.

2. In the event the provider fails to comply with the U.D.C. or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the City may recover, jointly and severally from the principal and surety of

the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment or any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

3. The City in its sole discretion may waive this requirement of a bond upon provider demonstrating sufficient financial resources or upon good cause shown to the Director of the Department of Transportation services.

(G) Fees.

In consideration of the City's grant of authority to utilize the City's Streets for the provision or lease of telecommunications services, the telecommunications provider or lessee shall pay a franchise fee to the City in the following amounts:

1. A telecommunications provider or lessee who provides service to residents, businesses or institutions in Fayetteville shall pay monthly an amount equal of four percent (4%) of its Gross Revenues within the corporate limits of the City during the preceding month.

2. A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line that uses City right-of-way or Streets shall pay the City a reasonable annual fee based upon an installation fee and charge per linear feet of transmission line that traverses the City or based upon such other method as the City deems appropriate. Such a fee may be paid in a lump sum in advance or in a combination of a lump sum plus annual or monthly payments as the City deems fit;

3. Calculation of Payments. All payments made to the City shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.

4. Audit. Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications provider's or lessee's books and records that are reasonable necessary for the City to determine compliance with this subsection. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the City to allow the determination of Gross Revenues and to otherwise document accurate payment of fees.

5. Fees not a Tax. Unless otherwise inconsistent with applicable law, the fees provided in this subsection are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications

services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

(H) Removal.

1. Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any obsolete or unusable telecommunications facility or related appurtenances that the City determines is a visual blight or nuisance to the public on, in, under or above the Streets shall, at its own expense, remove such facilities and appurtenances from the Streets.

2. A telecommunications facility need not be removed if renovation or restoration is planned within a reasonable period of time by the telecommunications franchisee or licensee or if the telecommunications facility is being utilized for telecommunications services. In such case, prompt written notice shall be provided to City specifying why such telecommunications should not be removed and the specific time frame, if applicable, for any planned renovations or restoration.

(I) Transfer; Transfer of Control.

A grantee or transferee of a telecommunications provider or licensee shall notify, at the same time it applies to the Arkansas Public Service Commission for a transfer or change of control, the City of Fayetteville of: 1) its intent to be a telecommunications provider or licensee within Fayetteville; 2) its intent to comply with **§110.02 Telecommunication Franchises**, and; 3) its intent to promptly provide such information pertinent to the proposed transaction as may reasonably be required by the City.

(J) Existing Telecommunications Providers.

As telecommunications providers delivering service within Fayetteville as of January 1, 2011, AT&T and the Prairie Grove Telephone Company need not apply for a franchise and are deemed to currently hold a franchise in conformity with §110.02. All previous telecommunication franchise ordinances are deemed superseded by this code section so that all existing or new telecommunication companies in Fayetteville must comply with all of the terms of §110.02 upon its effective date.

ORDINANCE NO. 2990
~~MICROFILMED~~

AN ORDINANCE AMENDING ORDINANCE NO. 2892 TO AMEND THE TERMS AND CONDITIONS UNDER WHICH SOUTHWESTERN BELL TELEPHONE COMPANY SHALL CONTINUE TO OPERATE ITS TELEPHONE SYSTEM WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS, AND TO AMEND THE AMOUNT OF THE ANNUAL PAYMENT MADE BY THE TELEPHONE COMPANY TO THE CITY.

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That Section 1 of Ordinance No. 2892 is hereby amended to read as follows:

Section 1. The Southwestern Bell Telephone Company, its successors and assigns (herein referred to as "telephone company") shall continue to operate its telephone business and all business incidental to or connected with the conducting of a telephone business and system in the City of Fayetteville, Arkansas, (herein referred to as "city"). The plant construction and appurtenances used in or incidental to the giving of telephone service and to the maintenance of a telephone business and system by the telephone company and said city shall remain as now constructed, subject to such changes as may be considered necessary by the telephone company in the conduct of its business and said telephone company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purpose for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public streets, avenues, roads, highways and alleys within the limits of said city as the same from time to time may be established; provided, said streets, avenues, roads, highways and alleys, as now laid out or as hereafter established, shall not be obstructed thereby, and the telephone company, at the telephone company's own expense, shall relocate its facilities upon written request from the city to remove or prevent any such obstruction.

Section 2. That Section 2 of Ordinance No. 2892 is hereby amended to read as follows:

1103 654

Fay City Clerk

WASHINGTON
ARCHIVE
CIRCULAR

84 MAR 14 PM 3 53

FILED
FOR RECORD



Section 2. Beginning in 1984, the telephone company shall pay to the city for the period January 1, 1984, through December 31, 1984, inclusive, and thereafter for like periods an amount equal to 4% of the access line billing within the corporate limits during the preceeding year, or \$137,048, whichever is greater. Payments shall be in equal quarterly installments on or before the last day of March, June, September and December of each year.

Section 3. The telephone company shall have ninety (90) days from and after the passage and approval of this ordinance to file its written acceptance of this ordinance with the city clerk, and upon such acceptance being filed, this ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the mayor.

PASSED AND APPROVED this 6th day of March, 1984.

APPROVED:

BY: Paul R. Noland
Mayor



ATTEST:

BY: Suzanne C. Kennedy
City Clerk

CERTIFICATE OF RECORD

STATE OF ARKANSAS)
Washington County) SS.

I, Alma L. Kollmeyer, Circuit Clerk and Ex-Officio Recorder for Washington County, do hereby certify that the annexed foregoing instrument was filed for record in my office on the 11 day of May, 1984, at 3:53 clock PM, and the same is duly recorded in Book 1103 at page 654.

Witness my hand and seal this 11th day of May, 1984.

Alma L. Kollmeyer
Circuit Clerk and
Ex-Officio Recorder
By Brenda Allen
Deputy Clerk

1103 655

ACCEPTANCE

WHEREAS; the City Council of the City of Fayetteville of Washington
County, Arkansas, did on the 6th day of March A.D. 19 84, enact
an ordinance entitled: 2990

AN ORDINANCE AMENDING ORDINANCE NO. 2892 TO AMEND THE TERMS AND CONDITIONS
UNDER WHICH SOUTHWESTERN BELL TELEPHONE COMPANY SHALL CONTINUE TO OPERATE
ITS TELEPHONE SYSTEM WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS, AND TO AMEND
THE AMOUNT OF THE ANNUAL PAYMENT MADE BY THE TELEPHONE COMPANY TO THE CITY.

and

WHEREAS, said ordinance was on the 6th day of March A.D.
19 84, duly approved and signed by the Mayor of said City and the seal of
said City thereto affixed and attested by the City Clerk:

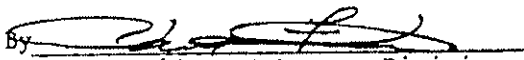
NOW; THEREFORE; in compliance with the terms of said ordinance so enacted,
approved and attested, the Southwestern Bell Telephone Company hereby accepts
said ordinance and files this its written acceptance with the City Clerk of said
City in his said office.

Dated this 3rd day of May, 19 84

Approved:

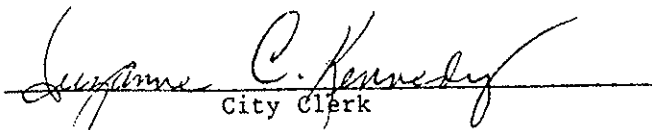
SOUTHWESTERN BELL TELEPHONE COMPANY


General Attorney

By 
President-Arkansas Division

Acceptance filed in the office of the City Clerk of Fayetteville, Ar

This 14th day of May A.D. 19 84


City Clerk

ORDINANCE NO. 4278

AN ORDINANCE PROVIDING FOR THE MANAGEMENT AND PRESERVATION OF THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES WITH RESPECT TO TELECOMMUNICATIONS SERVICES; PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH TELECOMMUNICATIONS PROVIDERS AND LESSEES MAY OCCUPY THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES; PROVIDING FOR COMPENSATION TO THE CITY ON A COMPETITIVELY NEUTRAL AND NON-DISCRIMINATORY BASIS; CREATING AN OFFENSE AND PROVIDING PENALTIES.

WHEREAS, the provisions of telecommunications services has become an essential part of modern life that can significantly enhance the quality of life for the City's residents, businesses and institutions; and

WHEREAS, the City's rights-of-way and public places are valuable assets to the City and its residents, businesses and institutions; and

WHEREAS, the City has invested and will continue to invest substantial public monies in the acquisition, construction and maintenance of public rights-of-way and public places; and

WHEREAS, grant of permission to a private entity to use public rights-of-way and public places is a valuable property right that eliminates the necessity for the private entity to invest substantial capital; and

WHEREAS, the City is entitled to fair and reasonable compensation from a telecommunications provider who utilizes the City's public rights-of-way and public places for the delivery of its services; and

WHEREAS, the United States Congress has recently adopted the Telecommunications Act of 1996 (the "Act"), which substantially amended the telecommunications law of the United States; and

WHEREAS, Section 253(a) of the Act provides that no local regulation or legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service; and

WHEREAS, Section 253(c) of the Act provides that nothing in the Act affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis. if the compensation required is publicly disclosed; and



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Ordinance No. 4278

WHEREAS, it is in the best interests of the City and its residents, businesses and institutions, to establish rules and regulations that encourage the provision of telecommunications services, encourage telecommunications competition, treat telecommunications providers on a competitively neutral and nondiscriminatory basis, preserve and protect the City's rights-of-way and public places, secure fair and reasonable compensation for the private use of the City's rights-of-way and public places, and take such other necessary steps to responsibly protect the public health, safety and welfare;

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

Section 1. TITLE. This Ordinance shall be known as "The City of Fayetteville Telecommunications Ordinance".

Section 2. DEFINITIONS. As used in this Ordinance, the following terms shall have the meanings set out:

2.1. "Applicant" means a telecommunications provider or telecommunications lessee that applies for a franchise or license pursuant to this Ordinance.

2.2. "Franchise fee" means compensation paid to the City by the telecommunications provider or lessee in exchange for the use of the City's streets to deliver telecommunications services.

2.3. "Gross revenues" means all revenues from basic local service, excluding, among other things, extension, terminal equipment, toll, access, yellow pages, and other miscellaneous equipment revenues, consistent with Arkansas Code Ann. § 14-200-101 (a)(1)(E).

2.4. "Person" means any individual, resident, citizen, business, firm, corporation, partnership, governmental agency, or institution.

2.5. "Streets" means all streets, roads, highways, alleys, rights-of-way, public utility easements, public property, public ways and air space over such streets, roads, alleys, public rights-of-way, public utility easements, public property and public ways located within the geographic limits of the City.

2.6. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received.

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2.7. "Telecommunications facilities" or "facilities" means all conduits, manholes, poles, antennas, transceivers, wires, cable (including fiber optic cable) and appurtenances owned or utilized by a telecommunications provider or telecommunications lessee and located in, under or over the Streets of the City and utilized in the provision of telecommunications services.

2.8. "Telecommunications lessee" or "lessee" means any person, firm, corporation, partnership, or other business entity, including "resellers," that provides telecommunications services within the geographic boundaries of the City, including long-distance services that originate or terminate in the City, by utilizing, purchasing or leasing a telecommunications facility of a telecommunications provider or any element thereof, whether through purchase, lease, contract, interconnection agreement, or other business arrangement; provided that a person that owns its own telecommunications facilities in the City and utilizes, purchases or leases telecommunications facilities or elements thereof of other telecommunications providers in the City shall be classified as a telecommunications provider under the terms of this Ordinance.

2.9. "Telecommunications provider" or "provider" means any person, firm, corporation, partnership or other business entity, other than the City, that provides telecommunications services within or without the geographic boundaries of the City by utilizing its own telecommunications facilities to provide telecommunications services.

2.10. "Telecommunications services" or "services" means any service delivering telecommunications by a telecommunications provider or lessee that the provider or lessee is authorized to provide under federal, state and local law, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 521 et seq., and the Telecommunications Act of 1996.

2.11. "Transmission line" means a telecommunications facility that is used solely for the purpose of transmitting signals from one point to another point and does not include a line for the purpose of delivering telecommunications services to any person in the City.

Section 3. REQUIREMENT OF CITY'S CONSENT.

3.1. Every telecommunications provider and telecommunications lessee that utilizes a telecommunications facility must obtain a franchise or license from the City in accordance with this Ordinance in order to provide telecommunications services. Prior to providing any telecommunications facility, or utilizing any telecommunications facility, the provider or lessee must agree in writing to comply with the terms and conditions of this Ordinance and enter into a franchise agreement or license agreement.

Section 4. APPLICATION PROCESS.

4.1. Any telecommunications provider or lessee seeking to utilize the Streets to provide telecommunications service (the "Applicant") shall complete a brief application form approved by the Department of Public Works. Such application form shall briefly describe the general nature of the service to be provided, the type of construction or use of facilities required, the name, address and telephone number of the person or entity seeking to provide the service, and the name, address and telephone number of an authorized representative of the person or entity.

4.2. The Applicant shall also provide evidence in a form satisfactory to the City that it has the financial, legal and technical qualifications necessary to provide the service for which it seeks a franchise or license. The provision of authorization from the Arkansas Public Service Commission shall be deemed satisfactory evidence of these qualifications.

4.3. In considering whether to grant a franchise or license or impose terms and conditions on the grant of a franchise or license, the City may consider, without limitation, the following factors to the extent not already considered by the Arkansas Public Service Commission:

- a) the Applicant's financial ability to pay the compensation and fees required by this Ordinance;
- b) the Applicant's ability to construct and operate the telecommunications facilities it seeks to utilize;
- c) the Applicant's compliance with the terms and conditions of federal, state and local law including applicant's compliance in other jurisdictions in which it operates;
- d) the capacity of the Streets to accommodate the Applicant's proposed facilities;
- e) the damage or disruption, if any, of public or private facilities, improvements, or landscaping if a franchise or license is granted;
- f) the public interest in minimizing the cost and disruption of construction in, on, under and above the Streets;
- g) the effect of public health, safety or welfare if a franchise or license is granted;

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- h) the availability of alternate routes and/or locations for the proposed facilities;
- i) whether the imposition of certain terms and conditions or the failure to grant the requested franchise or license would prohibit or have the effect of prohibiting the ability of the Applicant to provide any interstate or intrastate telecommunications services; and
- j) any other factor relating to whether the grant of a franchise or license impinges on the City's right to manage its Streets.

4.4. An Applicant for a telecommunications franchise or license shall submit with its Application a fee in the amount of \$150.00 in partial compensation to the City for processing the Application.

4.5. If the City approves the Application, the provider or lessee shall reimburse the City for any reasonable costs and expenses, including attorney's fees, incurred by the City, which are not already covered by the Application fee required in Section 4.4 of this Ordinance, to review and evaluate the Application and prepare and negotiate a franchise agreement or license agreement with the provider or lessee, and including the costs of any publication of an ordinance as provided in Section 5.

4.6. All Applications and/or amendments to franchise agreements shall be forwarded by the City of Fayetteville Telecommunications Board for their advice, if any, prior to City approval.

4.7. Fees, costs and expenses imposed by City on a telecommunications provider or lessee shall, only to the extent specifically required by applicable law including the regulations of the Arkansas Public Service Commission, be credited toward the Franchise fee imposed on the telecommunications provider or lessee.

Section 5. FRANCHISE OR LICENSE AGREEMENT.

5.1. As a condition of the grant of a franchise or license, the provider or lessee shall enter into a franchise agreement or a license agreement with the City. A telecommunications provider shall enter into a franchise agreement. A telecommunications lessee shall enter into a license agreement.

5.2. The franchise agreement or license agreement shall contain such additional terms and conditions as are not in conflict with the terms of this Ordinance as may be necessary and appropriate for the particular circumstances of the provider or lessee and its delivery of telecommunications services.

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5.3. The franchise agreement or license agreement shall be adopted as an ordinance by the City prior to the initiation of any construction or the delivery of any service.

5.4. A franchise agreement may be amended from time to time upon agreement of the City and the provider or lessee.

5.5. It is not the policy or intention of the City in this Ordinance to prohibit the provision of telecommunications service within the City but rather to protect the City's interests in the Streets.

Section 6. CONSTRUCTION MAINTENANCE.

6.1. Construction Application. Prior to the beginning construction, excluding routine maintenance or emergency repair, of any telecommunications facility, the Applicant shall apply to the Department of Public Works of the City for permission to carry out construction activities in the City's Streets, and shall comply with all requirements of that department or any other ordinance or code applicable hereto.

6.2. Construction Plan. Prior to beginning construction, as defined above, the Applicant shall submit a plan describing the proposed construction. The plan shall specify:

- a) The design of any telecommunications facilities to be constructed or utilized;
- b) A map showing the precise location of any telecommunications facility to be constructed or utilized and any appurtenant facilities such as poles, attachments, guy wires, and the like;
- c) A description of any agreements that have been reached or are necessary with other telecommunications providers or providers of other utility services regarding use of existing facilities;
- d) The timetable for completion of construction, including any phases of construction;
- e) Such other information as will provide the City with pertinent information relating to the construction of the telecommunications facilities, including any pertinent information requested by the City.

6.3. Prior Authority. Prior to beginning construction, the Applicant shall have received all necessary regulatory authority to construct a telecommunications facility or provide telecommunications service from the Arkansas Public Utilities Commission, the

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Federal Communications Commission, or other appropriate state or federal agency. Evidence that it has received such regulatory authority shall be filed with the City.

6.4. Standards of Construction. The method of construction, workmanship used, and materials utilized in the construction shall conform to all applicable federal, state and local statutes, rules, regulations and ordinances. All work shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality so as not to create a hazard or dangerous condition on the Streets. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any telecommunications facility presents a danger to the public health, safety or welfare, then the telecommunications provider or lessee shall, at its own cost and expense, upon thirty (30) days advance written notice, at its own cost and expense, promptly correct all such conditions.

6.5. Maintenance and Repair. Any telecommunications facility constructed or utilized pursuant to a franchise or license shall be maintained and repaired in accordance with the standards and under the terms and conditions set out in the preceding paragraph and such other terms and conditions as shall appear in this Ordinance or the franchise agreement or license agreement.

6.6. Minimal Disruption. Construction, maintenance and repair of the telecommunications facilities shall be conducted in such a manner as to minimize any interference with or disruption of the City's Streets, traffic, residences, businesses and institutions. The provider shall at all times endeavor to use trenchless technology in appropriate circumstances.

6.7. Restoration. Any disturbance of the City's Streets shall be repaired and restored by the telecommunications provider or lessee at its expense and to a condition as good as that prevailing before the work causing such disturbance was commenced.

6.8. Location of Facilities. New poles and other new facilities shall be located to the extent feasible in such a way as to minimize their effect on the visual landscape and on other aesthetic considerations and so as to minimize inconvenience.

6.9. Burial of Transmission Lines. A telecommunications provider shall place its transmission line or other facilities underground in certain areas designed by the City Council, but only if existing utility providers maintaining line or facilities in the same areas have or will be required by the City to place their lines or facilities underground.

6.10. Co-location; Sharing of Pole Space. To the maximum extent feasible, a telecommunications provider constructing a new transmission line or other facility, or expanding an existing line or facility, shall utilize facilities. The owner of any existing

facility shall to the extent permitted by law and consistent with any pole attachment regulations of the Public Service Commission, the Federal Communications Commission or other appropriate agency, permit the telecommunications provider to utilize its pole.

6.11. Movement of Facilities. A telecommunications provider shall be required to temporarily disconnect or relocate any of its facilities located in the Streets at its own expense when required by the City by reason of traffic conditions; public safety; or the construction, installation or repair of any public road, highway, building, park or other public project. The provider shall cooperate with any other public utility authorized by the City to provide utility service utilizing the City's Streets. If a private entity is required by City to modify or affect the Streets, that entity shall compensate the provider for its costs for the disconnection or relocation of any of the provider's facilities. Provider shall be notified by said private entity as soon as practical of any plan affecting provider's facilities.

6.12. Tree Trimming. A telecommunications provider is authorized to trim trees in the City's Streets to the extent necessary to properly maintain its transmission line or other facility, but prior to major trimming projects, it shall provide 24 hours' notice to the City. The City, at its option, may choose to supervise such tree trimming. Upon conclusion of the tree trimming, the provider shall immediately clean up and remove all debris.

6.13. Curb Cuts. No provider shall make paving cuts or curb cuts without the written consent of the Director of the Department of Public Works.

Section 7. PERFORMANCE BOND.

7.1. Prior to the provision of service, the provider shall post a performance bond, satisfactory to the City, in the City's favor to ensure faithful performance of the terms and provisions of the franchise agreement and any planned construction as designated in the construction plan the provider has filed with the City pursuant to Section 6.2. The bond shall be equivalent to ten (10%) percent of the total cost of the construction as provided in the construction plan, or \$100,000, whichever is greater.

7.2. In the event the provider fails to comply with this Ordinance or the franchise agreement, or to complete the construction in a safe, timely, and competent manner, after notice and a reasonable opportunity to cure, the City may recover, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the provider, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

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7.3. The City in its sole discretion may waive this requirement of a bond upon provider demonstrating sufficient financial resources or upon good cause shown to the Director of the Department of Public Works.

Section 8. TERM OF FRANCHISE FOR PROVIDERS.

8.1. Unless otherwise specified in a franchise agreement, a telecommunications franchise shall be for a term of no less than five (5) years and no more than twenty (20) years.

Section 9. TERM OF LICENSE FOR LESSEES OR RESELLERS.

9.1. Unless otherwise specified in a license, a telecommunications license shall be for a term of no less than five (5) years and no more than twenty (20) years.

Section 10. FEES.

10.1. Amount. In consideration of the City's grant of authority to utilize the City's Streets for the provision or lease of telecommunications services and for other good and valuable consideration, the telecommunications provider or lessee shall pay a franchise fee or license fee to the City in the following amounts:

- a) A telecommunications provider who provides service to residents, businesses or institutions in the City shall pay an amount equal to four percent (4%) of its annual Gross Revenues within the corporate limits of the City during the preceding year. Payments shall be in equal quarterly installments on or before the last day of March, June, September and December of each year;
- b) A telecommunications provider who provides service solely to persons outside the geographic boundaries of the City by utilizing a transmission line shall pay the City a reasonable annual fee based upon an installation fee and charge per linear foot of transmission line that traverses the City or based upon such other method as the City deems appropriate. Such a fee may be paid in a lump sum in advance, or in a combination of a lump sum plus annual payment as the City deems fit;
- c) A telecommunications lessee who delivers telecommunications services shall pay the City four percent (4%) of its annual Gross Revenues derived from the delivery of telecommunications service within the City

10.2. Public Interest Obligations. If, as a condition of the grant of a franchise or a

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license, the City negotiates with a telecommunications provider or lessee regarding certain conditions or requirements in the public interest as provided in Section 15 of this Ordinance, the City shall, if requested of a telecommunications provider, provide a credit against the fee based upon the percentage of Gross Revenues it would otherwise require in compensation so that the total compensation paid to the City is no more than the equivalent of that which would be required under Section 10.1 hereof. Any such conditions or requirements will be the result of negotiations between the City and a telecommunications provider or licensee.

10.3. Time of Payment. All fees due and owing shall be paid on a quarterly basis on or before the last day of March, June, September and December of each year.

10.4. Late Payment. In the event that any payment is not actually received by the City on or before the date due under this Ordinance, interest thereon shall accrue from such date until received at the rate of ten percent (10%) per annum.

10.5. Calculation of Payments. All payments made to the City shall be accompanied by a statement certified as true by an appropriate employee of the provider or lessee explaining the basis of the calculation on which the payment was made.

10.6. Payments. Payments shall be made by certified check to the City of Fayetteville, c/o City Treasurer, 113 West Mountain, Room 309, Fayetteville, Arkansas 72701 or by wire transfer to an account of the City designated in writing by the City Treasurer.

10.7. Public Disclosure. The payment of any fee under this Section 10 shall be publicly disclosed.

10.8. Audit. Upon reasonable notice, the City shall have the right to inspect and copy the telecommunications providers or lessee's books and records that are reasonably necessary for the City to determine compliance with this Section 10. A telecommunications provider or lessee shall maintain sufficient financial records governing its operation in the City to allow the determination of Gross Revenues and to otherwise document accurate payment of fees. To the extent permitted under the Arkansas Freedom of Information Act, the City shall maintain the confidentiality of such records.

10.9. Fees not a Tax. Unless otherwise inconsistent with applicable law, the fees provided in this Section 10 are not taxes and are separate from, and in addition to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications provider or lessee, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services; provided that no fee imposed by this section shall be imposed in violation of state or federal law.

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Section 11. INDEMNIFICATION.

11.1. As a condition of the grant of a franchise or license, the telecommunications provider or lessee shall agree to indemnify, defend and hold harmless the City, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorneys' fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the provider's or lessee's operations, the exercise of the franchise or license herein granted or the breach by the provider or lessee of its obligations under this Ordinance and the franchise agreement or license and/or based upon or in any way connected with the activities of the provider or lessee, or their subcontractors, employees and agents. The provider or lessee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of the providers or lessee's employees, including compliance with Social Security and withholding requirements.

11.2. The indemnification obligations of the provider or lessee set forth in this Ordinance are not limited in any way by the amount or type of damages or compensation payable by or for the provider or lessee under Worker's Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under any franchise agreement or license, if any, or the terms, applicability or limitations of any insurance held by the provider or lessee.

11.3. The City does not, and shall not, waive any rights against the provider or lessee which it may have by reason of the indemnification provided for in this Ordinance because of the acceptance by the City, or the deposit with the City by provider or lessee, of any of the insurance policies described in this Ordinance.

11.4. The indemnification of the City by a provider or lessee provided for in this Ordinance shall apply to all damages and claims for damages of any kind suffered by reason of any of the provider's or lessee's operations referred to in this Ordinance regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

11.5. A provider or lessee shall not be required to indemnify the City for negligence or misconduct on the part the City or its officials, boards, commissions, agents, or employees, provided that the provider or lessee shall be responsible for its proportionate share, if any, of any damages or claims resulting from any negligent act or omission.

Section 12. INSURANCE.

12.1. As a condition of the grant of any franchise under this Ordinance, the provider shall, at its sole expense, take out and maintain during the term of the franchise public liability insurance with a company licensed to do business in the State of Arkansas with a rating by A.M. Best & Co. of not less than "A" that shall protect the provider, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under the franchise, whether such operations be by the provider or a lessee, or its officials, officers, directors, employees and agents or any subcontractors of the provider or a lessee. This liability insurance shall include, but shall not be limited to, protection against claims rising from bodily and personal injury and damage to property, resulting from provider's or lessee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- a) The policy shall provide coverage on an "occurrence" basis;
- b) The policy shall cover personal injury as well as bodily injury;
- c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage;
- d) Broad form property damage liability shall be afforded;
- e) The City shall be named as an additional insured on the policy;
- f) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.
- g) Standard form of cross-liability shall be afforded; and
- h) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the City.

12.2. In any franchise granted pursuant to this Ordinance, the City shall reserve the right to adjust the insurance limit coverage requirements of the franchise no more often than once every three (3) years. Any such adjustment by the City will be no greater than the increase in the Arkansas Consumer Price Index (all consumers) for such three (3) year period.

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12.3. Provider or lessee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

12.4. A telecommunications franchisee or licensee may elect to self insure to provide the insurance coverage required hereunder provided the licensee, upon request, submits to the City copies of its certificates of self-insurance and of its most recent audited financial statements showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A telecommunications franchisee or licensee shall also provide to the City documentation evidencing its process for reviewing and paying claims. The City shall be protected by such self-insurance to the same extent as an additional insured on a policy issued by an insurance company. If, during the term of a franchisee or licensee, granted hereunder, a self-insurance program ceases, or a franchisee's or licensee's assets or reserves are no longer sufficient to comply with the above coverage requirements, the licensee/franchisee shall immediately notify the City of such lapse of coverage and shall obtain commercial insurance in accordance with the above requirements within thirty (30) days following such notice.

Section 13. RENEWAL.

13.1. A telecommunications provider or lessee that seeks to renew its franchise or license granted by the City pursuant to this Ordinance shall submit an application of renewal to the City no less than 180 days before expiration of its franchise or license. The Applicant shall provide such necessary information to show that it meets the requirements for renewal set out in this Section 13.2.

13.2. In considering whether to grant a renewal request, the City shall consider whether the telecommunications provider or licensee:

- a) if applicable, continues to have the financial, legal and technical ability to provide telecommunications services to the City's residents, businesses and institutions;
- b) has complied with the terms of this Ordinance and its franchise or license agreement;
- c) has promptly cured any violation of this Ordinance or breach of its franchise or license agreement;
- d) has fully and promptly paid any franchise fees or other compensation required by the City and any taxes imposed by the State or the City;

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- e) agrees to meet any special needs or interests determined by the City and to be imposed by the City in a competitively neutral and nondiscriminatory way; and
- f) has cooperated with the City in carrying out the terms and conditions of this Ordinance and the franchise or license agreement and has provided such pertinent information as the City has requested throughout the term of the agreement.

The City shall also consider any other matter that is relevant to the renewal of the franchise or license.

13.3. To the extent no inconsistent with state law, the City reserves the right to refuse to renew any franchise for any reason, provided that the City shall comply with Section 253 of the Telecommunications Act of 1996.

13.4. If it chooses not to renew the franchise or license, the City shall first provide the telecommunications provider or lessee with an opportunity to be heard before the City Council and city shall thereafter issue a written decision stating its reasons for non-renewal.

Section 14. REMOVAL.

14.1. Within thirty (30) days following written notice from the City, any telecommunications provider or other person that owns, controls or maintains any obsolete or unusable telecommunications facility or related appurtenances that create a visual blight or nuisance to the public on, in, under or above the Streets shall, at its own expense, remove such facilities and appurtenances from the Streets.

14.2. A telecommunications facility need not be removed if renovation or restoration is planned within a reasonable period of time by the telecommunications franchisee or licensee or if the telecommunications facility is being utilized for telecommunications services. In such case, prompt written notice shall be provided to City specifying why such telecommunications facility should not be removed and the specific time frame, if applicable, for any planned renovations or restoration.

Section 15. PUBLIC INTEREST OBLIGATIONS.

15.1. As a condition of granting a franchise or license under this Ordinance, the City may negotiate with a provider regarding the provisioning of certain payments, in-kind contributions, provisions of capacity for utilization by the City, educational institutions or other public entities, or to undertake other activities or make available other facilities for the

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purpose of enhancing the health, welfare or safety of the City and its residents, businesses and institutions.

15.2. If the City and provider or lessee agree to some or all of the conditions of Section 15.1, the City shall disclose such conditions publicly.

Section 16. TRANSFER; TRANSFER OF CONTROL.

16.1. A grantee or transferee of a telecommunications provider or licensee shall notify, at the same time it applies to the Arkansas Public Service Commission for a transfer or change of control, the City of: 1) its intent to be a telecommunications provider or licensee; 2) its intent to comply with this Ordinance; 3) to enter into a franchise agreement with the City and shall within twenty (20) days of request by the City, provide such information pertinent to the proposed transaction as may reasonably be required by the City.

16.2. To the extent not inconsistent with state law, failure to obtain the approval of the City Council as required by this Section 16 may be deemed a forfeiture of the applicable franchise or license by the City Council.

Section 17. EXISTING TELECOMMUNICATIONS PROVIDERS.

17.1. A telecommunications provider delivering service in the City as of the effective date of this Ordinance who previously has been awarded a franchise or license may continue to operate according to the terms of the franchise or license it has been awarded. Upon completion, expiration or termination of such a franchise or license, the telecommunications provider promptly shall comply with the terms of this Ordinance.

17.2. Any telecommunications provider or lessee who as of the effective date of this Ordinance is delivering service without a franchise or license shall submit an application pursuant to Section 4 of this Ordinance with 90 days of the effective date. The provider or lessee shall also submit a written statement indicating that it comply with the terms and conditions of this Ordinance while its Application is pending and that it shall pay all appropriate fees retroactive to the effective date.

Section 18. FORFEITURE.

18.1. If, in the City's judgment, a telecommunications provider or lessee is or may be in violation or breach of any term or condition of this Ordinance or franchise or license agreement pursuant hereto, the City shall notify the provider or lessee of the suspected violation or breach. Upon notification, the provider or lessee shall supply to the City within 30 days all information and documentation the City requests with respect to the suspected

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violation or breach and shall make such statement to the City as it wishes in an effort to explain or mitigate the violation or breach.

18.2. If the City is not satisfied with the information, documentation and explanation of the provider or lessee, it may make a finding of a breach or violation and notify the provider or lessee of such finding. Thereafter, the provider or lessee shall have a reasonable period of time (the "Cure Period") as determined by the City to take such steps as are necessary to cure the violation or breach.

18.3. If, at the conclusion of the Cure Period, the City determines that there remains a breach or violation of this Ordinance or franchise or license agreement pursuant hereto, the City shall schedule a hearing before the City Council or a duly authorized committee or representative of the Council for the purpose of making a final determination as to whether a violation or breach exists. At the hearing, the provider or lessee, representatives of the City, and the public may present evidence relevant to the alleged violation or breach.

18.4. To the extent not inconsistent with state law, at the conclusion of the hearing, or within 14 days thereafter, the City Council shall take such steps as it deems appropriate, including one or more of the following:

- a) pursuing any of the remedies available to it as provided in Section 19 of this Ordinance;
- b) ordering the provider or lessee to take such steps as are necessary to cure the violation or breach on pain of forfeiture;
- c) declaring a forfeiture of the franchise or violation of the terms of the license and ordering the provider to take such steps as are consistent with state law.

18.5. If the provider or lessee is dissatisfied with the decision of the City, it may seek relief to the Arkansas Public Service Commission, if applicable, or in Washington county Circuit Court or federal court of competent jurisdiction.

Section 19. ENFORCEMENT; PENALTIES.

19.1. A violation of any provision of this Ordinance relating to the health or safety of citizens of the City shall be a misdemeanor, subject to a fine of not more than \$500 for each offense and punishable by not more than 12 months in jail. If the provider or lessee is a corporation and is convicted of a misdemeanor, it shall be subject to a fine as provided in Section 10.99 of the City of Fayetteville, Arkansas Code of Ordinances.

19.2. A violation of any provision of this Ordinance shall be a separate and distinct offense and shall subject the offender to a civil penalty in the amount of \$500 for each day the violation continues. The City may recover such penalty in a civil action in a court of competent jurisdiction if the offender does not pay the penalty within twenty (20) days of the time the offender has been cited for the violation.

19.3. The City may seek injunctive relief or abatement orders in a court of competent jurisdiction to enforce the provisions of this Ordinance.

19.4. The City may pursue any of the remedies in Sections 18 or 19 of this Ordinance separately or in conjunction with one another.

Section 20. GENERAL PROVISIONS.

20.1. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and shall not affect the meaning or interpretation of this Ordinance.

20.2. No recourse against the City. Without limiting such immunities as the City or any other person may have under applicable law, a telecommunications provider or lessee awarded a franchise or license under this Ordinance shall have no recourse whatsoever against the City or its officials, members, boards, commissions, agents or employees for any loss, cost, expense, liability or damage arising out of any action undertaken or not undertaken pursuant to any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, or other applicable law, unless such recourse is expressly authorized by statute, this Ordinance or other ordinance. Nothing in this Section 20.2 shall limit a telecommunications provider's right to challenge the validity or enforceability of of any provisions contained in this Ordinance.

20.3. Force Majeure. In the event a telecommunications providers or lessee's performance of any terms, conditions, obligations or requirements of this Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided that the provider or lessee has notified the City in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond the provider's or lessee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes.

20.4. Non-waiver of remedies. The failure of the City to take any action to enforce any violation or breach of this Ordinance shall be deemed a waiver of its right to subsequently enforce any identical or similar violation or breach.

Page 18
Ordinance No. 4278

20.5. Severability. If any portion of this Ordinance is declared invalid by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which remaining portions shall continue in force and effect.

20.6. Notices and Filings. All notices required by this Ordinance to be provided to the City shall be provided in writing to the Fayetteville City Clerk. All filings shall be made with the City Clerk unless otherwise provided in this Ordinance.

PASSED AND APPROVED this 21st day of the November, 2000.



APPROVED:

By: Fred Hanna
Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff
Heather Woodruff, City Clerk

FAYETTEVILLE CODE OF ORDINANCES
TITLE XI BUSINESS REGULATIONS

CHAPTER 110: ADVERTISING*

110.01 Billposting

- (A) The posting of any bills, notices, or advertisements of any kind whatever upon any electric light, telephone, or telegraph pole within the limits of the city is hereby prohibited.
- (B) It shall be unlawful for any person to post, stick, paint, or otherwise attach (or cause to be posted, stuck, painted, or caused to be otherwise attached) any bill sign, notice, poster, or other advertisement to any building, fence, wall, vehicles, or other property, public or private, without first having obtained permission from the owner of such property.

(Code 1965, §§13-2, 13-3; Ord. No. 241, 9-11-1908; Ord. No. 3773, §1, 4-5-94; Code 1991, §110.01)

Cross reference(s)--Penalty, §10.99, Use of Radios, Loudspeakers, etc., §96.06; Advertising Prohibited in Parks, §97.087; Marking or Painting Advertising Matter on Sidewalks, §98.05.

110.02–110.99 Reserved

City of Fayetteville Staff Review Form

C. 4
Amend §72.58 Off-Street Parking
Facilities; Rules and Rates (K)
Page 1 of 6

City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

Chief Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

Council approve amendment to Fayetteville City Parking Ordinance Chapter 72.58(K) by changing its title and enacting a new (3). This amendment would add verbiage to address person(s) removing any motor vehicle from a municipal parking lot without first paying the fees due the city for the period of time the vehicle was parked in the lot.

N/A
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

4-13-11
Date

Previous Ordinance or Resolution #

City Attorney

4-14-2011
Date

Original Contract Date:

Original Contract Number:

Paul a. Beuhr
Finance and Internal Service Director

4-14-2011
Date

Received in City
Clerk's Office

04-13-11 P04:54 RCVD

Chief of Staff

4-18-11
Date

Received in
Mayor's Office

Mayor

5/1/11
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and members of the City Council

From: Chief of Police Greg Tabor 

Date: March 8, 2011

Subject: Amendment of Fayetteville Code of Ordinances,
Title VII Traffic Code, Chapter 72: Parking Regulations

PROPOSAL:

City Council amends Fayetteville Code of Ordinances, Title VII Traffic Code, Chapter 72: Parking Regulations, to provide the Police Department with an enforcement option to address person(s) removing any motor vehicle from a municipal parking lot without first paying the fees due the city for the period of time the vehicle was parked in the lot. Currently, there is not an option within our Parking Regulations ordinances that addresses this issue causing enforcement to be taken through Arkansas State criminal offenses, which may be considered harsh or excessive given the infraction.

RECOMMENDATION:

Staff recommends approval of amending Chapter 72.58(K) by changing its title and enacting a new (3) as follows:

“(K) One-way traffic and improperly driving through or around gates on city parking lots.”

“(3) No driver may attempt to leave a gated city parking lot without paying the amount of parking fees due pursuant to subsections (G) or (H) by driving around the gate, by improperly driving through a gated entry or exit, or by damaging or improperly manipulating any part of the gate.”

BUDGET IMPACT:

There would be no budget impact in this amendment.



Departmental Correspondence

www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
Don Marr, Chief of Staff
Casey Jones, Prosecuting Attorney

FROM: Kit Williams, City Attorney

DATE: January 14, 2011

RE: Ordinance to explicitly prohibit drivers attempting to avoid paying parking fees by driving around or bypassing the city parking lot gate

The City Prosecutor has recommended that his office be authorized another tool to enforce lawful behavior of drivers who owe for paid parking in a gated city parking lot. Driving around a parking gate or speeding through a gate opened by another driver who properly paid for his parking can be dangerous to citizens and destructive of city property. Although the state charge of Theft of Services can be applied, it would be helpful to have a city ordinance that expressly makes this a violation.

Attached is a draft of a proposed new subsection which would make driving around or improperly through a gate a violation of the ordinance.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §72.58 OFF-STREET PARKING FACILITIES; RULES AND RATES (K) TO EXPLICITLY PROHIBIT A DRIVER DRIVING AROUND OR IMPROPERLY THROUGH A GATED PARKING LOT EXIT

WHEREAS, some drivers have attempted to avoid paying for their parking in a gated city parking lot by driving through the gate before it can lower or driving around the gate which can be destructive to landscaping and dangerous to the driver, pedestrians and other drivers; and

WHEREAS, this should be an explicit violation of the City Parking.

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 §72.58(K) by changing its title and enacting a new (3) as follows:

“(K) One-way traffic and improperly driving through or around gates on city parking lots.

...

“(3) No driver may attempt to leave a gated city parking lot without paying the amount of parking fees due pursuant to subsections (G) or (H) by driving around the gate, by improperly driving through a gated entry or exit or by damaging or improperly manipulating any part of the gate.”

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Current law

FAYETTEVILLE CODE OF ORDINANCES
TITLE VII TRAFFIC CODE

parking rate.

(I) *Rates for parking in city parking garages.*

(1) City parking garage on Meadow Street:

- (a) First level (covered), \$50.00 per space/per month, or not more than \$4.00 per visit if entry not restricted.
- (b) Second level (covered), \$50.00 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 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).

(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 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

Change
title

New section
(3)

City of Fayetteville Staff Review Form

C. 5
Amend \$72.58 Off-Street Parking
Facilities; Rules and Rates
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

Don Marr

Submitted By

Administration

Division

Administration

Department

Action Required:

A Ordinance to amend Parking Ordinance 5324 to add Event Parking in Section ____ enabling the Walton Arts Center to request approval from City Staff to utilize an event parking program on nights when 600 or more patrons are expected at the Walton Arts Center for an event.

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

4/15/11
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:



City Attorney

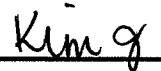
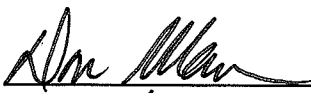
4-15-2011
Date



Finance and Internal Services Director

4-15-2011
Date

Received in City 04-13-11 P04:36 RCVD
Clerk's Office

Chief of Staff

4-18-11
Date

Received in
Mayor's Office




Mayor

4/19/11
Date

Comments:



City Council Meeting Date:
May 3, 2011

City Council Agenda Memo

To: Mayor and Members of the City Council
Thru: Mayor Jordan
From: Don Marr, Chief of Staff
Date: 4/18/2011
Subject: Amending Ordinance 5324 to add Event Parking as an Option for Large WAC events

Recommendation:

The City Staff recommends on behalf of the Mayor's office that the City Council amend Parking Ordinance 5324 Pay Parking Program to allow for an Event Parking Program which would enable the Walton Arts Center to request approval from City Staff to utilize an event parking model on nights/matinees when 600 or more patrons are expected to attend the Walton Arts Center.

Background:

The Walton Arts Center Executive Management Team has requested the Mayor to bring to the City Council an ordinance amendment to enable the City Parking Staff to approve an Event Parking Program. The goal of the event parking model is to increase customer satisfaction with parking in the large Walton Arts Center Lot (on the Corner of Dickson Street and West Street). Event parking model will facilitate mass exodus from the main Walton Arts Center parking lot after WAC performances, something that the current parking systems are not designed to handle in mass numbers.

The key to the scenario is the ability to move back and forth between event parking and hourly parking. The Walton Arts Center will request approval to use the event parking model for all events when 600 or more patrons are expected to attend the WAC for an event. This will include evening and matinee shows. For evening shows the Event Parking model would begin at 4 pm. For matinee shows the event parking model would begin at 12 noon. In both instances the event parking model would remain in effect through 30 minutes (max.) past curtain time.

The City will investigate numerous operational processes (such as provide handheld devices to accept cash/credit cards and issue an all in one parking receipt/ticket with a QR code that our current equipment will read and allow exiting at any time before 2 pm the next day without a gate attendant, or the use of other manual cash/and manual validating ticket dispensing options.) The final option selected will have to provide some type of receipt/tickets that will allow unattended exit from the lot for those individuals that would have to leave early, or for those individuals who stay after performances to attend business establishments on Dickson Street, and who do not wish to leave immediately following the shows.

Event parking would be utilized either until the lot is full or until 30 minutes post curtain time.

When the WAC show ends and when heavy traffic begins flowing out of the lot, all exit gates (2 on West Ave., and 1 on Dickson) will be raised allowing traffic to exit freely by presenting their receipt/tor special ticket upon exit until the heavy volume of those individuals leaving immediately following the show have exited. Then the gates will be lowered and hourly parking will resume.

The Walton Arts Center Management expects event parking o be utilized approximately 120 to 150 events per calendar year.

The fee for event parking will be a flat fee of \$5.00 and would raise proportionately with any adjustments made by the City Council to the maximum daily rate.

The City Staff (Internal Auditor, Senior Director of Finance & Internal Services, Division Manager of Parking & Telecommunications, Senior Director of Transportation Services, Police Staff and the Chief of Staff) will work with the WAC executive management staff to ensure Cash Controls, Timely Reporting of weekly revenues, ensuring timely deposits, establishing event parking protocols to reduce any loss of revenue due to hourly parkers who entered the lots prior to the Event Parking hours beginning; attempting to exit during the mass show exit period, and to establish an event parking ticket processes, and management of automobile traffic during mass exit period.

Budget Impact:

The event parking model will be staffed fully by the Walton Arts Center staff contracted for Parking Services by the City of Fayetteville at no additional cost to the current contract for this budget year.

There are two options being considered at this time. The current budget has \$31,000 for improvements in Entertainment District Parking program (equipment, software, lots, etc) available for additional equipment, programming and lot improvements

Option One: The City would provide up to 4 hand held "roaming cashier" devices for accepting payment at entry and providing receipts/tickets for individuals entering during the event model period and allowing exit at any time without a gated attendant, is at a cost to the City of \$ 59,000 for equipment, software, and programming.

Option two: The purchase of validating equipment and special ticket stock costing up to \$20,000 in equipment and software and supplies. There would be additional staff time to program & validate show tickets for up to 150 events not included in this new equipment cost.

Depending on the options selected – which will be based on ensuring sound audit controls, and operational/customer satisfaction success, and lower overall cost the parking budget impact could result in an additional expense which would have to be brought back to the City Council for approval. This will be evaluated against the benefit to the program, customer service and cash control requirements.

WAC Main Lot Event Parking Plan

The goal of the event parking model is to increase customer satisfaction with parking on Dickson Street by facilitating mass exodus from the main WAC lot after WAC performances, something that the current automated system is not set up to do.

The key to our scenario is the ability to move back and forth between event parking and hourly parking. It is dependent on the technological capabilities of the machines and the ability of Amano's technicians to adapt them for this specific purpose. If this is not possible, an alternative scenario laid out below bypasses the equipment as much as possible.

Event Parking - Key stats

Event Parking Hours: 4pm evening/noon matinees through 30 minutes (max.) past curtain time

Lots utilized: WAC main lot

Cost: \$5

Event parking happens when: 600 or more patrons expected at WAC for an event

Estimated # of event parking times: 120-150 events/yr

General Procedures

Prior to the event, signs would be posted to advise parkers that event parking will be in effect at the given time. At the onset of event parking, the lot would be staffed by two entrance gate attendants (provided by WAC) and a rover to monitor available space and troubleshoot. All would be under the supervision of the WAC parking team lead. The two attendants would greet entering patrons, collect the fee (\$5, cash only), and give them a machine-validated ticket or "pass" of some kind. The pass would be a validated and time-coded ticket that would work with the machine and allow unattended exit from the lot any time before 2:00pm the next day (like a pre-paid ticket). Event parking would continue until the lot is full or until 30 minutes post curtain. At that time, the attendants would remove signage and hourly parking would resume.

Anyone parked in the lot prior to event parking or entering the lot after it could exit the lot at any time following normal hourly procedures. At the end of the show when heavy traffic begins flowing out of the lot, all four gates would be opened allowing traffic to exit freely until the flow stops. The gates would be lowered and any event parkers who linger could use the pass in the machines to exit the lot. Up to four WAC staff would be used to monitor the exits during the immediate post-show exit (approximately 15 minutes). Once the crowd has subsided, the gates would be lowered and remaining parkers would use their validated pass to exit when they leave.

Event parking would take place when it is anticipated that the lot will be full. More specifically, event parking would be utilized when there are performances on the WAC campus with an anticipated attendance near 600. WAC will provide the City with a list of potential events at the beginning of each season and update it frequently as programming changes and ticket sales trends dictate. Generally, we expect 120-150 events per year will meet the event parking criteria.

Issues/Solutions:

- 1) Parking Machine tickets - The pass needs to be valid only for the day of the event as it will not be collected from cars exiting during the post-show rush. If the machine can be set to allow tickets to be dispensed without driving through, perhaps they can be validated in some way.
- 2) Shrinkage - Small loss of revenue due to hourly parkers exiting during the post-show rush could happen, although we anticipate this would be less than what currently is lost due to "prox outs" at the end of show. Revenue flow will be monitored by city staff to ensure that revenue intake remains steady or higher than pre-event parking.
- 3) Cash Controls - A system of cash controls will be established with points of accountability along the chain of custody. This system would require a controlled inventory of passes or tickets (such as sequentially numbered receipts). The City would control the tickets/passes by issuing them to WAC staff prior to each Season. Attendants would be issued a fixed amount of passes with a dollar value and cash for change. At the end of the shift, unused passes and all cash would be returned in a dollar amount equal to the initial amount. A flash report could be issued by WAC each evening to City on sales. WAC could deposit the money and issue the city a check monthly or quarterly.
- 4) Parking Fees - Event parking will be a flat fee of \$5. If \$5 is maximum set by City ordinance, we would like to include language that would raise it proportionately with any adjustments made by the City Council to hourly rates.
- 5) Traffic Control - To successfully clear the lots as quickly as possible, utilizing the existing Dickson Street police officers to help manage traffic flow and time the light at Dickson/West will be useful.

Alternative Scenario

If securing validated tickets/passes that work with the machines upon exit proves impossible, we would modify the above plan to provide color-coded passes (not readable by the machines) to patrons who enter the lot. WAC would staff the exits from the start of event parking until 2am. Cars with tickets who parked before or after event parking could leave as usual, cars who received a color-coded pass would be let out manually by the attendant. This is a workable solution, however, it would require some additional labor to staff the exits longer.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §72.58 OFF-STREET PARKING FACILITIES; RULES AND RATES OF THE FAYETTEVILLE CODE TO ADD EVENT PARKING FOR LARGE WALTON ARTS CENTER EVENTS

WHEREAS, the Walton Arts Center Staff has requested that the City amend our parking regulations to allow an event parking option when 600 or more patrons are expected to attend the Walton Arts Center; and

WHEREAS, an event parking option may increase customer satisfaction with parking in the Walton Arts Center parking lot during large events by allowing a more rapid exit from the lot after a performance.

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 §72.58 **Off-Street Parking Facilities** (H) *City parking lots and paid on-street parking spaces within the Entertainment District Parking Zone* of the Fayetteville Code by enacting a new subsection (5) Event Parking as shown below:

“(5) Event Parking. The Parking Manager may approve a request from the Walton Arts Center staff to implement Event Parking when 600 or more patrons are expected to attend an event at the Walton Arts Center. Such Event Parking will require a person desiring to park their vehicle in the Walton Arts Center Parking Lot to pay a fee of \$5.00. The Walton Arts Center shall provide sufficient personnel to staff any Event Parking it requests.”

PASSED and APPROVED this 17th day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FAYETTEVILLE CODE OF ORDINANCES TITLE VII TRAFFIC CODE

- (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) *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.*

For parking in the WAC Lot, South Lot, East Lot, North Lot 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) 2:00 p.m. until 5:00 p.m. -- \$.50 per hour
- (b) 5:00 p.m. until 2:00 a.m. the following day -- \$1.00 per hour
- (c) 2:00 a.m. until 2:00 p.m. -- free parking
- (d) 2:00 p.m. until 2:00 a.m. the following day -- the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00

- (2) Saturday and Sunday

- (a) 2:00 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
- (c) 2:00 a.m. until 2:00 p.m. -- free parking
- (d) 2:00 p.m. until 2:00 a.m. the following day -- the owner or operator of any vehicle shall have the option to choose a maximum day rate of \$5.00

- (3) Motorcycle and motor scooter parking in specially designated motorcycle/motor scooter paid parking spaces.

The above parking rates for normal, passenger car sized paid parking spaces shall be reduced by 50% for all specially designated motorcycle/motor scooter paid parking spaces. All motorcycles and motor scooters will have to pay the normal full rate if parked within a normal, passenger car sized parking space.

- (4) Discounted parking rates for employees. (Employee Parking Cards or coupons) 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

CD72:13

ADD → (5) Event Parking

City of Fayetteville Staff Review Form

C. 6

Walton Arts Center Contract to
Provide Educational and Entertainment
Services for Fayetteville Citizens
Page 1 of 10City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

Don Marr

Submitted By

Parking Management

Division

Transportation Services

Department

Action Required:

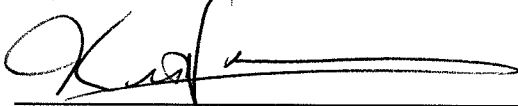
A Resolution to approve an agreement with Walton Arts Center for art services provided from revenues earned through the parking program in the Entertainment District.

\$ 250,000.00
Cost of this request\$ 289,000.00
Category / Project BudgetTransfers to Outside Agencies
Program Category / Project Name2130.9131.5719.00
Account Number\$ -
Funds Used to DateEntertainment District Parking
Program / Project Category Name

Project Number

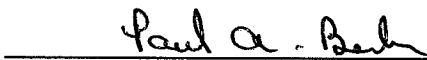
\$ 250,000.00
Remaining BalanceOff Street Parking
Fund NameBudgeted Item ☒Budget Adjustment Attached ☐
Department Director4/15/11
Date

Previous Ordinance or Resolution #


City Attorney4-14-2011
Date

Original Contract Date:

Original Contract Number:


Finance and Internal Services Director4-15-2011
DateReceived in City 04-13-11 P04:38 RCVD
Clerk's Office
Chief of Staff4-18-11
DateReceived in
Mayor's Office

Mayor

4/19/11
Date

Comments:



City Council Meeting Date:
May 3, 2011

City Council Agenda Memo

To: Mayor and Members of the City Council
From: Don Marr, Chief of Staff
Thru: Mayor Jordan
Date: 4/15/2011
Subject: Walton Arts Center, Contract for Arts & Related Services

Recommendation:

The City Staff recommends on behalf of the Mayor's office that the City of Fayetteville, AR contract with the Walton Arts Center for Arts Education Services, Discounted Space and Administrative Services (marketing, promotion, administration) for local arts organizations, and discounted and free tickets for art festivals and visual arts exhibits.

Background:

During the approval of the City of Fayetteville Entertainment Parking Program Ordinance and budget approvals the City Council approved a line item budget for \$250,000 of parking revenues to be allocated to the Walton Arts Center contract for art services and discounted space and administration fees for local arts organizations. Attached to this proposed contract before the Council dated March 2011 from the Walton Arts Center is a list of services to be provided at Net Cost. This listing is showing costs for more services than the budget allocated amount of \$250,000. It shows services provided estimated at a value \$557,792.

The City Staff recommends after consultation with the City Attorney's office to ensure compliance with legal requirements necessary when spending tax payer dollars for services to pay \$250,000 for Programs directly serving 7,500 children each year within the Fayetteville School District. This provides programming to children, who might not otherwise have access to performing arts programs. The Staff also recommends that the contract include services that are either free to the attendees for Fayetteville Citizens or provide reduced ticket prices of \$10 or less. Such events would include Artosphere Festival events, visual arts exhibitions that support local artists as well as nationally prominent artists to Fayetteville. Lastly, the Staff recommends that the contract for services also provide reduced rent and professional services (marketing, promotion, public relations, and administration) for growing local arts organizations to promote a strong cultural infrastructure in the City of Fayetteville.

Budget Impact:

This contract will utilize \$250,000 of the funds approved in the 2011 budget Parking Program which were designated for this purpose.

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **April 14, 2011**

RE: **Walton Arts Center \$250,000.00 Contract to Provide Educational and Entertainment Services for Fayetteville Citizens**

Two months into my job as Fayetteville City Attorney, I had to question and disagree with the constitutionality of a Resolution passed a few months before my term began that committed Fayetteville to donate about \$2.3 million as a matching gift for the proposed Boys' and Girls' Club. I immediately became very unpopular with citizens who had assumed the City could provide the required matching funds for the Donald W. Reynolds Ten million dollar grant. After my memo, a substantial private fundraising effort had to be launched which fortunately was successful and led to the construction of the beautiful new Reynolds Boys' and Girls' Club.

Aldermen questioned my opinion and sought an official Arkansas Attorney General Opinion. Attorney General Mark Pryor agreed with my interpretation of the constitution that the City could not give \$2.3 million to the Boys and Girls Club. (Ark. Attorney General Opinion No. 2001-135). Attorney General Pryor also spoke about how a city could purchase services for its citizens from non-profit corporations. He rejected "publicly funded scholarships" to a private entity. He said "the contract could restrict access to those services only in ways the city might if it were providing the services itself. Accordingly ... the city should most definitely require 'other types of public access' if it contracts with Boys' and Girls' Club, Inc." (page 5)

Attorney General Pryor also noted the most basic test for a city to contract for services from a non-profit, **the contract must be “supported by adequate consideration** and services a proper governmental end.”

The City Council has the power and duty to initially determine whether the services offered are a fair value for our City’s taxpayers for the money requested for those services. If the services offered would be a “good buy” for our taxpayers and open to the City citizens generally, then there should be the required “adequate consideration.”

Therefore, please examine the proposed Contract and Schedule of City Services Provided carefully and determine if the services (valued at over \$500,000.00 by the Walton Arts Center) constitute adequate consideration for Fayetteville citizens’ \$250,000.00 annual payment.

ORDINANCE NO. _____

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AWARD A CONTRACT FOR EDUCATIONAL, ENTERTAINMENT AND ADMINISTRATIVE SERVICES IN 2011 TO THE WALTON ARTS CENTER COUNCIL, INC. IN THE AMOUNT OF \$250,000.00

WHEREAS, the Walton Arts Center Council, Inc. was jointly created by the City of Fayetteville and the University of Arkansas to bring cultural arts and entertainment to our citizens; and

WHEREAS, the Walton Arts Center has long provided excellent cultural and fine arts performances and presentations for University staff and students and for the citizens of Fayetteville and the surrounding region; and

WHEREAS, the Walton Arts Center on Dickson Street in Fayetteville is uniquely situated and capable of providing unmatched arts education and cultural arts experiences and entertainment to Fayetteville citizens; and

WHEREAS, the City of Fayetteville desires to purchase such educational and entertainment services from the Walton Arts Center on Dickson Street to be delivered at reduced or no cost to Fayetteville citizens during 2011 and thereafter.

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 determines that the unique experience, capability, and expertise of the Walton Arts Center to provide superior cultural and fine arts education and entertainment at reduced or no cost to Fayetteville citizens and to provide space and administrative help for Fayetteville citizen/artists makes formal competitive bidding not feasible nor practical and thereby waives formal competitive bidding for these services and approves an Educational, Entertainment and Administrative Services contract with the Walton Arts Center Council, Inc. for 2011 in the amount of \$250,000.00 which is automatically renewable for three additional years and authorizes Mayor Jordan to execute this contract attached as Exhibit A.

PASSED and **APPROVED** this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

CONTRACT
FOR THE PROVISION OF EDUCATIONAL, ENTERTAINMENT AND
ADMINISTRATIVE SERVICES FOR CITIZENS OF
THE CITY OF FAYETTEVILLE, ARKANSAS
TO BE PROVIDED BY THE WALTON ARTS CENTER COUNCIL, INC.

THIS CONTRACT made and entered by and between the City of Fayetteville, Arkansas, an Arkansas municipal corporation, and the Walton Arts Center Council, Inc., an Arkansas nonprofit corporation, WITNESSETH:

IN CONSIDERATION of the mutual promises and obligations of the parties contained herein, and other good and valuable consideration, **the City of Fayetteville and the Walton Arts Center Council, Inc. hereby agree** as follows:

1. The City of Fayetteville agrees to purchase educational services for its citizens; discounted and free tickets for its citizens, discounted space and administrative services for its citizen/artists and other educational and entertainment services for its citizens.

2. The Walton Arts Center Council, Inc. agrees to provide educational services for Fayetteville citizens; discounted and free tickets for Fayetteville citizens, discounted space and administrative services for Fayetteville citizen/artists and other educational and entertainment services for Fayetteville citizens. These services are more particularly described in the Walton Arts Center Schedule of City Services for 2011 attached as Exhibit 1.

3. To accomplish both the goals of Fayetteville and the Walton Arts Center, Fayetteville agrees to pay Walton Arts Center, and Walton Arts Center agrees to accept **Two Hundred Fifty Thousand Dollars (\$250,000.00)** in monthly installments of \$20,833.33 for services identified in the Schedule of City Services Provided for 2011. The Walton Arts Center agrees to provide the services noted in paragraph 2 above and in the Schedule of City Services Provided for the amount of Two Hundred Fifty Thousand Dollars for 2011.

4. The initial term of this Contract shall be one (1) year from January 1, 2011 to December 31, 2011. This Contract shall automatically renew for up to three successive one (1) year periods. Both parties may terminate this contract without penalty by giving the other party thirty (30) days written notice of its intent to terminate. For purposes of notice required by this paragraph, notice shall be sent by the parties via first-class U.S. Mail to the addresses indicated below, or otherwise delivered to the administrative office of the other party.

To Fayetteville: City of Fayetteville
Mayor's Office
113 W. Mountain St.
Fayetteville, AR 72701

To the Walton Arts Center: The Walton Arts Center Council, Inc.
c/o Walton Arts Center Executive Director
P.O. Box 3547
Fayetteville, AR 72702-3547

5. The Walton Arts Center shall invoice Fayetteville monthly for services provided herein. Payments by Fayetteville shall be made within thirty (30) days of the receipt of the Walton Arts Center invoice.

6. Changes, modifications or amendments to the scope, price or fees dictated by this Contract shall not be allowed without a prior formal Contract amendment approved by the Mayor and the City Council of Fayetteville in advance of the change.

7. Freedom of Information Act: City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If an FOIA request is presented to Fayetteville, the Walton Arts Center will do everything possible to provide the documents in a prompt and timely manner as prescribed in the FOIA (Ark. Code Ann. § 25-19-101, *et seq.*). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8. Jurisdiction: Legal jurisdiction and venue for the resolution of any legal or equitable disputes arising under this Contract lie exclusively in the Circuit Court of Washington County, Arkansas.

**CITY OF FAYETTEVILLE,
ARKANSAS**

**THE WALTON ARTS CENTER
COUNCIL, INC.**

By: _____
LIONELD JORDAN, Mayor

By: _____
Authorized Agent

Date: _____

Date: _____

Attest: _____
Sondra E. Smith, City Clerk

Witness: _____

**Walton Arts Center
Schedule of City Services Provided
at Net Cost
March 2011**

Net Cost

Learning & Classroom

Programs directly serve 7500+ children each year in the Fayetteville school district - many of whom would not otherwise have access to performing arts programs. In addition, teacher development programs improve learning in classrooms across the district, impacting thousands of students.

<i>Classroom Series ticket price subsidy</i>	\$ 5,350
<i>Bus transportation subsidy</i>	\$ 8,500
<i>In-school residencies and teacher development</i>	\$ 32,606

Public Performances

Performances in Fayetteville that are either free to the attendees or ticket price is \$10 or less, including Artosphere Festival events. Visual arts exhibition is free and supports local artists as well as brings nationally prominent artists into Fayetteville.

<i>Take-A-Seat ticket giveaways - free tickets for social service groups</i>	\$ 30,425
<i>Free events and performances - or subsidized (less than \$10/ticket)</i>	\$ 331,581
<i>Visual arts - free exhibits</i>	\$ 40,000

Community Support

Walton Arts Center subsidizes rent and professional services (marketing, PR, administration) for growing local arts organizations to promote a strong cultural infrastructure in the City of Fayetteville.

<i>T2 lease subsidy and marketing/box office assistance</i>	\$ 26,075
<i>NWACCC lease subsidy</i>	\$ 42,380
<i>SONA BWH use, marketing services provided</i>	\$ 40,875

Total Net Cost of Services Provided	<u>\$ 557,792</u>
--	--------------------------

City of Fayetteville Staff Review Form

C. 7
Walton Arts Center Contract
Parking Services
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

5/3/2011

City Council Meeting Date
Agenda Items Only

Don Marr

Submitted By

Parking Management

Division

Transportation Services

Department

Action Required:

A Resolution to approve an agreement with Walton Arts Center for services provided or the parking program in the Entertainment District.

\$ 39,000.00
Cost of this request

\$ 289,000.00
Category / Project Budget

Transfers to Outside Agencies
Program Category / Project Name

2130.9131.5719.00
Account Number

\$ -
Funds Used to Date

Entertainment District Parking
Program / Project Category Name

Project Number

\$ 289,000.00
Remaining Balance

Off Street Parking
Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Don Marr
Department Director

4/19/11

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

K. J. ...
City Attorney

4/14/2011

Date

Paul A. Beck
Finance and Internal Services Director

4-14-2011

Date

Received in City
Clerk's Office 04-13-11P04:37 RCVD

Kim G.

Don Marr
Chief of Staff

4-18-11

Date

Received in
Mayor's Office



Lionel Jordan
Mayor

4/19/11

Date

Comments:



City Council Meeting Date:
May 3, 2011

City Council Agenda Memo

To: Mayor and Members of the City Council
Thru: Mayor Jordan
From: Don Marr, Chief of Staff
Date: 4/15/2011
Subject: Walton Arts Center, Contract Parking Services

Recommendation:

The City Staff recommends a resolution to approve an agreement with Walton Arts Center for services provided for the Parking Program in the Entertainment District.

Background:

In June 2010 an ordinance enacted a pay parking program in the Entertainment District Parking Zone. Prior to the implementation of the new paid parking program, the Walton Arts Center submitted projected costs for services associated with startup and operational expenses. Walton Arts Center provides customer service in adjacent gated lots to the Walton Arts Center for patron entries and exits, assistance with the location of available open parking spaces as the lots fill, parking ticket problem resolution, validation, and assistance in using the pay parking machines and pay in advance features.

Budget Impact:

The City Council approved \$39,000 in the 2011 approved Budget. This contract will utilize all \$39,000 of the funds approved in the 2011 budget approval, Parking Program which were designated for this purpose.

ORDINANCE NO. _____

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AWARD A
CONTRACT FOR PARKING SERVICE IN 2011 TO THE WALTON ARTS
CENTER COUNCIL, INC. IN THE AMOUNT OF \$39,000.00

WHEREAS, the Walton Arts Center staff has provided parking services for its patrons and others who utilize the city-owned Walton Arts Center gated lots and has the unique expertise and experience to provide continuing parking services for this location.

**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 determines that the unique experience and expertise of the Walton Arts Center staff to provide parking services in gated city lots surrounding the Walton Arts Center makes formal competitive bidding not feasible nor practical and thereby waives formal competitive bidding for these services and approves a parking services contract with the Walton Arts Center Council, Inc. for 2011 in the amount of \$39,000.00 which is automatically renewable for three additional years and authorizes Mayor Jordan to execute this contract attached as Exhibit A.

PASSED and **APPROVED** this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**CONTRACT FOR THE PROVISION OF PARKING-RELATED SERVICES BETWEEN
THE CITY OF FAYETTEVILLE, ARKANSAS
AND
THE WALTON ARTS CENTER COUNCIL, INC.**

THIS CONTRACT, made and entered by and between the City of Fayetteville, Arkansas, an Arkansas municipal corporation, (hereinafter "Fayetteville"), and The Walton Arts Center Council, Inc., an Arkansas nonprofit corporation, (hereinafter "Walton Arts Center"), WITNESSETH:

IN CONSIDERATION of the mutual promises and obligations of the parties contained herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Fayetteville desires to obtain customer-related services connected with the parking of vehicles in its Dickson Street Entertainment District Parking Zone, particularly customer service in parking lots adjacent to the Walton Arts Center, as well as public relations and communication services for persons parking in the District.
2. Walton Arts Center desires to facilitate patron ease and convenience related to the parking of patrons' vehicles for performances or other programs at the Walton Arts Center.
3. Fayetteville requires educational assistance for patrons using gated parking lots adjacent to the Walton Arts Center, customer service assistance for persons at entries and exits of the lots during performances at the Walton Arts Center, staffing for reserved event parking, and communications services. All services must be rendered to persons parking in lots adjacent to the Walton Arts Center, whether or not the person is a patron of Walton Arts Center, and shall be performed in coordination with Fayetteville's Parking Management Division.
4. To accomplish both the goals of Fayetteville and Walton Arts Center, Fayetteville agrees to pay Walton Arts Center, and Walton Arts Center agrees to accept **Thirty-Nine Thousand Dollars (\$39,000.00)** in monthly installments of \$3,250.00 for services identified in the Annual Operational Expenses for 2011, attached as Schedule 1, and incorporated herein.

Walton Arts Center agrees to provide the services noted in paragraph 3 above and in the Annual Operational Expenses schedule.

5. The initial term of this Contract shall be one (1) year from January 1, 2011 to December 31, 2011. This Contract shall automatically renew for up to three successive one (1) year periods. Both parties may terminate this contract without penalty by giving the other party thirty (30) day written notice of its intent to terminate. For purposes of notice required by this paragraph, notice shall be sent by the parties via first-class U.S. Mail to the persons at the addresses indicated below:

To Fayetteville: City of Fayetteville
Mayor's Office
113 W. Mountain St.
Fayetteville, AR 72701

To Walton Arts Center: The Walton Arts Center Council, Inc.
c/o Walton Arts Center Executive Director
P.O. Box 3547
Fayetteville, AR 72702-3547

6. Walton Arts Center shall invoice Fayetteville monthly for services provided herein. Payments by Fayetteville shall be made within thirty (30) days of the receipt of the Walton Arts Center invoice.

7. Changes, modifications or amendments to the scope, price or fees dictated by this Contract shall not be allowed without a prior formal Contract amendment approved by the Mayor and the City Council of Fayetteville in advance of the change.

8. Freedom of Information Act: City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If an FOIA request is presented to Fayetteville, Walton Arts Center will do everything possible to provide the documents in a prompt and timely manner as prescribed in the FOIA (Ark. Code Ann. § 25-19-101, *et seq.*). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

9. Jurisdiction: Legal jurisdiction and venue for the resolution of any legal or equitable disputes arising under this Contract lie exclusively in the Circuit Court of Washington County, Arkansas.

CITY OF FAYETTEVILLE, ARKANSAS

**THE WALTON ARTS CENTER
COUNCIL, INC.**

By: _____
LIONELD JORDAN, Mayor

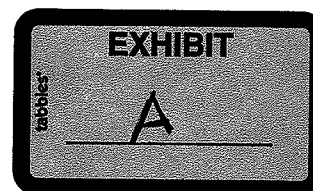
By: _____
Authorized Agent

Date: _____

Date: _____

Attest: _____
Sondra E. Smith, City Clerk

Witness: _____



**Walton Arts Center
Paid Parking Program Actual and Estimated Expenses
excluding (startup) for 2011**

Annual operational expenses

Customer Service

Lot attendants

Actual through 3/31/11

\$ 10,368

Estimated 4/1/11 - 12/31/11

\$ 32,000

Box office, Front of House

\$ 1,360

Overhead

Staff management, finance, communications

\$ 4,160

ANNUAL OPERATING EXPENSE

\$ 47,888

AGENDA REQUEST

C. 8
Amend §95.05 Regulation of
Smoking in Most Public Places
and Places of Employment
Page 1 of 6

FOR: COUNCIL MEETING OF MAY 3, 2011

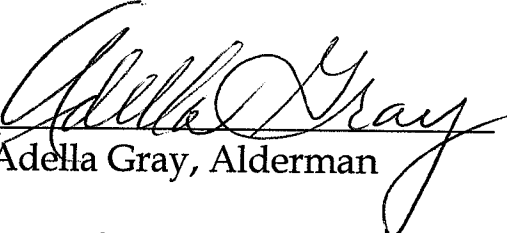
FROM:

ALDERMAN ADELLA GRAY

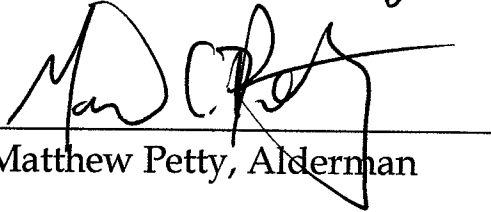
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §95.05 Regulation Of Smoking In Most Public Places And Places Of Employment Of The Fayetteville Code By Removing The Exemption For Bars

APPROVED FOR AGENDA:


Adella Gray, Alderman

4/19/11
Date


Matthew Petty, Alderman

4-20-2011
Date


City Attorney
(as to form)

4-17-2011
Date

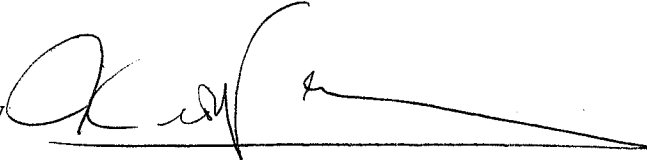
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney



DATE: February 25, 2011

RE: Proposed Amendment to Smoking Ordinance to include bars

The Smoking Ordinance was passed by the City Council and was later referred to the voters after a petition drive by its opponents. The voters passed the ordinance under provisions of Amendment 7 of the Arkansas Constitution after a hotly contested election campaign. Because of this citizens' vote, Amendment 7 protects this electoral decision by requiring that :

“No measure approved by the people shall be amended or repealed by . . . any City Council, except upon a yea and nay vote on roll call of two-thirds of all members elected to . . . the City Council. . . .”

This means that any proposed amendment to the Smoking Ordinance by the Fayetteville City Council will require the affirmative vote of six aldermen. The Mayor may not vote on this issue because of the above wording of Amendment 7 as he was not “elected . . . to the City Council.”

I have been asked about referring any passed amendment to the voters for their final approval. This can be done pursuant to A.C.A. Section 14-55-301 “by a majority vote of its members.” If this is not a section within the actual ordinance passed by the City Council, a later ordinance (within 30 days) can also refer an ordinance to the voters, but then a two-thirds majority of the City Council is required for passage.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN
MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT OF THE
FAYETTEVILLE CODE BY REMOVING THE EXEMPTION FOR BARS**

WHEREAS, second hand smoke is dangerous for employees and patrons of bars; and

WHEREAS, bartenders have higher rates of lung cancer than firefighters, coal miners and workers in some other occupations in which air pollution is a problem.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §95.05(C) *Exemptions* in its entirety and enacts a replacement §95.05(C) as shown below:

“(C) *Exemption.*

“Retail tobacco stores are exempted from the smoking prohibition of this ordinance.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §95.05(A) *Definitions* by deleting the reference to a “bar” within the definition of “*Place of employment*,” so that the third sentence shall read: “A ‘retail tobacco store’ is not a place of employment for purposes of this section.”

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Current law

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem may be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

(Code 1965, §§11-3, 11-3.1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83; Code 1991, §95.03)

State law reference(s)--Enforcement of lien for clearance by municipality, A.C.A. §14-54-904; Notice to unknown or nonresident owners, A.C.A. §14-54-902.

95.04 Public Nuisance; Abatement

- (A) It shall be unlawful for the owners, occupants, tenants, or lessees of any dwelling or place of business to allow garbage, trash or other litter to accumulate on his premises, or to place or cause to be placed paper, cardboard or other litter in such manner as to cause unsightly or unsanitary conditions in the city.
- (B) Code Compliance Officers or their authorized representatives shall have the duty of notifying the owner, occupant, tenant, or lessee of a dwelling or place of business where one or more of the conditions described in subsection (A) of this section is found to exist.
- (C) It shall be the duty of the owner, occupant, tenant or lessee of such premises to correct said condition or conditions within 30 days from date of receipt of such notice.
- (D) If the owner, occupant, tenant, or lessee fails to obey such notice and continues to maintain said prohibited condition or conditions, such person shall be deemed in violation of this section and shall be subject to the penal provisions contained in this chapter.
- (E) The provisions of this section are supplementary to, and do not amend or repeal the provisions of §§95.01 through 95.03 of this Code.

(Code 1965, §10-5; Ord. No. 1194, 4-6-59; Ord. No. 1619, 8-19-68; Code 1991, §95.04)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Municipal authority, A.C.A. §14-54-901; Removal or razing of buildings, A.C.A. §14-56-203.

95.05 Regulation Of Smoking In Most Public Places And Places Of Employment

- (A) **Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment, whether termed a private club or public establishment, that is devoted primarily to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant. An eating establishment, including but not limited to dining establishments, private clubs, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, hallways, classrooms, and employee cafeterias. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A "bar" and a "retail tobacco store" are not places of employment for purposes of this Section. An enclosed private office that is not regularly entered or occupied by a nonsmoking employee is not a place of employment for purposes of this section.

Public place.

- (1) Any enclosed indoor area that is used by the public or private club members and guests, except designated hotel and motel guest rooms.
- (2) Any swimming pool owned or operated by the city.

Retail Tobacco Store. A retail store utilized primarily for the sale and use of tobacco products

Remove
"bar"

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) *Prohibition of Smoking in public places and places of employment*

Smoking is prohibited in all public places, places of employment, and city vehicles unless specifically exempted in subsection (C).

(C) *Exemptions.*

The following types of establishments are exempted from the smoking prohibition of this ordinance:

- (1) Bars
- (2) Retail tobacco stores

(D) *Duties of Managers.*

- (1) The manager of a place within which smoking is prohibited by this ordinance shall place "No Smoking" or "Smoke Free" signage at the major entrance and other appropriate places within the establishment.
- (2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit or fail to make reasonable efforts to prevent smoking in any area where smoking is prohibited.

(E) *Enforcement.*

- (1) City police shall enforce this section pursuant to their normal police power.
- (2) If a manager knowingly permits or fails to make reasonable efforts to prevent smoking by the establishment's customers or employees where prohibited by this section, the manager shall be guilty of a violation and a fine or not more than \$100.00 per occurrence.
- (3) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty (\$50.00) dollars per occurrence.
- (4) In addition to the fines established by this Section, multiple violations of this Section by a

person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises on which the violation occurred.

(F) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(G) *Effective date.*

This ordinance shall take effect on February 1, 2004

(Ord. No. 3584, 12-17-91; Code 1991, §95.05; Ord. 4512, 09-02-03)

95.06-95.98 Reserved

95.99 Penalty

- (A) Any person failing to comply with an order as described by §95.01 shall, upon conviction, be punished by a fine of not less than \$10.00 nor more than \$100.00.
- (B) Whoever violates §95.04 shall be punished by a fine of not more than \$500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. The penalty for allowing the continuation thereof shall not exceed \$250.00 for each day that the same is unlawfully continued.
- (C) There is hereby created the office of Code Compliance Officer. Code Compliance Officers shall be hired by the Mayor or his designated representative and shall perform the duties and exercise the powers set forth in this chapter.
- (D) Code Compliance Officers are hereby authorized to issue citations to any person violating the provisions of §§95.01-95.04 or § 173.08(A) of the Code of Fayetteville, provided that their authority is expressly limited to removing or causing the removal of unsanitary or unsightly things, or to correcting or causing the correction of unsafe or unsanitary conditions on the property in question.

Agenda Session 4/26/11

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 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
May 3, 2011**

A meeting of the Fayetteville City Council will be held on May 3, 2011 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

City Council Agenda Session Presentations:

Mayor's Announcements, Proclamations and Recognitions:

1. Certificate of Achievement for Excellence in Financial Reporting

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the April 19, 2011 City Council meeting minutes.
2. **Bid #11-32 Nichols Erosion Control, Inc.:** A resolution awarding Bid #11-32 and authorizing a contract with Nichols Erosion Control, Inc. in the amount of \$31,430.00 for the purchase and installation of sod for two new soccer fields at the Lewis Soccer Complex.

Kit has new resolutions or contracts for some of these.

3. **Bid #11-22 Multi-Craft Contractors, Inc.:** A resolution awarding Bid #11-22 and authorizing a contract with Multi-Craft Contractors, Inc. in the amount not to exceed \$62,237.00 for HVAC and repair services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
4. **Bid #11-23 Schefers Roofing:** A resolution awarding Bid #11-23 and authorizing a contract with Schefers Roofing in the amount not to exceed \$60,554.40 for roofing repairs and upgrades related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
5. **Bid #11-25 Heckathorn Construction Company, Inc.:** A resolution awarding Bid #11-25 and authorizing a contract with Heckathorn Construction Company, Inc. in an amount not to exceed \$40,742.00 for window and door replacements related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
6. **Bid #11-33 Natural State Insulation:** A resolution awarding Bid #11-33 and authorizing a contract with Natural State Insulation in an amount not to exceed \$25,885.10 for attic seal and installation services related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
7. **Bid #11-34 Rocky Grove Sun Company:** A resolution awarding Bid #11-34 and authorizing a contract with Rocky Grove Sun Company in an amount not to exceed \$170,150.00 for solar equipment and installation related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.

B. Unfinished Business:

1. None

C. New Business:

1. **RZN 11-3777 (2143 North Ruppel Road/Daugherty):** An ordinance rezoning that property described in rezoning petition RZN 11-3777, for approximately 4.86 acres, located at 2143 North Ruppel Road from RSF-1, Residential Single-Family, 1 unit per acre to R-O, Residential Office.
2. **VAC 11-3785 (221 W. South St./Knight):** An ordinance approving VAC 11-3785 submitted by Kristen Knight for property located at 221 West South Street to vacate a portion of an un-constructed right-of-way, a total of 0.03 acres.
3. **Amend Ordinance No. 2990 and Ordinance No. 4278:** An ordinance to amend Ordinance No. 2990 of March 6, 1984 to acknowledge that some Fayetteville citizens and businesses are now within the Prairie Grove Telephone Company franchise area and to apply the same franchise fee to both telephone companies, to amend Ordinance No. 4278 of November 21, 2000 and to codify these combined ordinances.

- ✓ 4. **Amend §72.58 Off-Street Parking Facilities; Rules and Rate (K):** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates (K) to explicitly prohibit a driver driving around or improperly through a gated parking lot exit.
- ✓ 5. **Amend §72.58 Off-Street Parking Facilities; Rules and Rates:** An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates of the Fayetteville code to add event parking for large Walton Arts Center Events.
- ✓ 6. **Walton Arts Center Contract to Provide Educational and Entertainment Services for Fayetteville Citizens:** An ordinance to waive competitive bidding and award a contract for educational, entertainment and administrative services in 2011 to the Walton Arts Center Council, Inc. in the amount of \$250,000.00.
- ✓ 7. **Walton Arts Center Contract Parking Service:** An ordinance to waive competitive bidding and award a contract for parking service in 2011 to the Walton Arts Center Council, Inc. in the amount of \$39,000.00.
- ✓ 8. **Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars.

City Council Tour: Monday, May 2, 2011 at 4:30 p.m. The Council will tour the Fayetteville Executive Airport-Drake Field

Announcements:

Adjournment:

ADD:

Consent - Stag Grant - Sanitary Sewer System Improvements

NOTICE TO MEMBERS OF THE AUDIENCE

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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.

Pre Agenda Meeting 4-20-11

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 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
May 3, 2011**

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*for Excellence
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- ✓ 7. **Bid #11-34:** A resolution awarding Bid #11-34 and authorizing a contract with XXXXXXXXXX in the amount of \$XXXXXX for solar equipment and installation related to Energy Efficiency and Conservation Block Grant funded Community Revolving Loan Fund projects.
- pull 8. **State and Tribal Assistance Grant (STAG) Program Grant:** A resolution (David Jurgens item)

B. Unfinished Business:

1. None

C. New Business:

- ✓ 1. **RZN 11-3777 (2143 North Rupple Road/Daugherty):** An ordinance rezoning that property described in rezoning petition RZN 11-3777, for approximately 4.86 acres, located at 2143 North Rupple Road from RSF-1, Residential Single-Family, 1 unit per acre to R-O, Residential Office.
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- NB #
3
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- pk 8. **U of A License Agreement:** A Sharon Water item ?

9. **No Smoking in bars**

City Council Tour: Monday, May 2, 2011 at 4:30 p.m. The Council will tour the Fayetteville Executive Airport-Drake Field

Announcements:

Adjournment:

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CITY COUNCIL CITY FACILITIES TOURS
ALL TOURS ARE SCHEDULED FOR 4:30-6:00 p.m.

April 18	Animal Shelter and Ribbon-cutting of new Puppy Nursery
May 2	Fayetteville Executive Airport—Drake Field
May 16	Noland Wastewater Treatment Plant and Biosolids Management Site
June 6	Westside Wastewater Treatment Plant and Woolsey Prairie
June 20	Fayetteville Television Center
July 18	Solid Waste and Recycling
August 1	Parks, Fleet, Transportation Complex
August 15	Water/Sewer Facility, Tanks, and Pump Stations

Sondra Smith - Fwd: May 3, 2011 City Council - Mayor Announcements

From: Don Marr
To: Smith, Sondra
Date: 4/4/2011 4:42 PM
Subject: Fwd: May 3, 2011 City Council - Mayor Announcements
CC: Broyles, Lana; Edmonston, Connie; Jordan, Lioneld; Pate, Jeremy; Smith, Lindsley
Attachments: AR 2011 National Green Infrastructure Implementation Awards (1).docx

Sondra - Will you please make sure to put on the City Council Agenda the presentation of this award at the 5/3/2011 City Council Meeting. I am copying Lana, and Lindsley so that they can make sure that the Mayor is prepared with a script for this recognition.

Sondra - I also believe that Jeremy Pate was wanting to confirm a City Council Tour on April 18th at the normal City Council Tour time, to tour the newly remodeled Animal Shelter. We would like to get this listed on the Calendar as well. Jeremy, if there is any change on this please let Sondra know.

Thanks,
 Don

Don Marr



✓
 This award was
 moved to the
 April 19, 2011
 City Council Meeting
Ses

Chief of Staff for Mayor Jordan
 113 W Mountain Street
 Fayetteville, AR 72701
 Office: 479-575-8330
 For TDD: (Telecommunications Device for the Deaf)
 Dial 479-521-1316
 Email: dmarr@ci.fayetteville.ar.us
 Website: www.accessfayetteville.org

>>> Connie Edmonston 4/4/2011 3:47 PM >>>

Hi Lana,

Attached is the press release for the Northwest Arkansas Land Use Planning Program receiving a National Green Infrastructure Implementation Award. This award was given during the National Green Infrastructure Conference held in Shepherdstown, W. VA. on February 16, 2011. Would the Mayor like to present this award to the following group at the May 3rd City Council Meeting under Mayor's Announcements?

Bob Caulk, Fayetteville Natural Heritage Assoc. President
 Karen Rollet Ctrocker, Fay. Natural Heritage Assoc.
 Barbara Boland, Fay. Natural Heritage Assoc.
 Patti Erwin, Urban Forestry Coordinator for the AR Forestry Commission
 Robert Morgan - Beaver Water District

They can all be at the May 3rd City Council meeting for the Mayor to present the award to them. Let me know if this is approved by the Mayor. I will have them to bring their award to the meeting. I will be the contact person for these people. Lana, if you have any questions, please let me know.

Connie Edmonston
Parks and Recreation Director
City of Fayetteville, AR
113 West Mountain Street
Fayetteville, AR 72701
479-444-3471
TDD (Telecommunications Device for the Deaf): (479) 521-1316

<http://parks.accessfayetteville.org>
<http://twitter.com/fayparksandrec>



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