

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

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

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
June 16, 2009**

A meeting of the Fayetteville City Council will be held on June 16, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

1. FHS Baseball Team Proclamation

Presentations, Reports and Discussion Items:

1. Nominating Committee Report

A. Consent:

1. Approval of the June 2, 2009 City Council meeting minutes.
2. **Bid # 09-24 Downing Sales and Service:** A resolution to award Bid # 09-24 to Downing Sales and Service to approve the purchase of a front load Solid Waste truck in the amount of \$220,890.00 and to approve a budget adjustment of \$36,000.00.
3. **Bid # 09-28 Lewis Ford:** A resolution approving the purchase of an additional compact 2x4 extended cab pickup truck under Bid # 09-28 from Lewis Ford in the amount of \$15,987.00 for use by the Meter Operations.

4. **Bid # 09-36 Henard Utility Products:** A resolution awarding Bid # 09-36 and approving the purchase of one (1) trailer mounted sewer cleaner from Henard Utility Products of Searcy in the amount of \$52,176.00 plus tax for use by the Water & Sewer Division; and approving a budget adjustment.
5. **Bid # 09-37 Landers-McLarty Ford:** A resolution awarding Bid # 09-37 and approving the purchase of one (1) cab & chassis with dump body from Landers-McLarty Ford of Bentonville in the amount of \$34,783.03 for use by the Parks, Recreation & Community Spaces Division.
6. **Fourth Amendment to Articles of the Incorporation of the Walton Arts Center Foundation:** A resolution to approve the Fourth Amendment to Articles of Incorporation of the Walton Arts Center Foundation, Inc.
7. **Bid # 09-38 MHC Kenworth/Volvo:** A resolution awarding Bid # 09-38 and approving the purchase of one (1) diesel powered tandem axle dump truck from MHC Kenworth/Volvo of Springdale in the amount of \$110,299.25 for use by the Water & Sewer Division; and approving a budget adjustment.
8. **Bid # 09-39 MHC Kenworth/Volvo:** A resolution awarding Bid # 09-39 and approving the purchase of one (1) diesel powered tandem axle dump truck with square body from MHC Kenworth/Volvo of Springdale in the amount of \$109,190.00 for use by the Transportation Division.
9. **Bid # 09-40 Landers Ford Lincoln Mercury:** A resolution to award Bid # 09-40 to Landers Ford Lincoln Mercury in the amount of \$32,745.00 for a ¾-Ton Pickup Truck.
10. **Bid # 09-41 Dean Crowder Construction, Inc.:** A resolution awarding Bid # 09-41 and approving a construction contract with Dean Crowder Construction, Inc. in the amount of \$1,360,185.43 for improvements to Township Street from Gregg Avenue to North College Avenue; and approving a 15% project contingency in the amount of \$204,028.00.
11. **Bid # 09-43 Power Curbers, Inc.:** A resolution to award Bid # 09-43 to Power Curbers, Inc. in the amount of \$25,017.08 plus tax for the purchase of a trimmer for the curber machine and approve the attached budget adjustment.
12. **Bid # 09-44 Wheeler Lumber, LLC:** A resolution awarding Bid # 09-44 and approving the purchase of one (1) prefabricated steel trail bridge from Wheeler Lumber, LLC in the amount of \$105,250.00 plus tax for the Lake Fayetteville Trail.
13. **Mobile-Vision, Inc.:** A resolution approving the purchase of five (5) additional in-car video systems from Mobile-Vision, Inc. in accordance with the continuing bid waiver granted by Ordinance No. 4551 of 2004, in the amount of \$30,500.71 for use by the Fayetteville Police Department.
14. **2009 Bulletproof Vest Partnership Program Grant:** A resolution to approve the 50% matching grant application for the bulletproof vest partnership with the Department of Justice in the amount of \$39,199.82 for 54 body armor vests.

- 15. Arkansas Department of Environmental Quality Recycling Grant:** A resolution authorizing the Fayetteville Solid Waste & Recycling Division to accept an Arkansas Department of Environmental Quality Grant through Boston Mountain Solid Waste District in the amount of \$25,000.00 to fund the purchase of recycling containers for collection at Fayetteville Public Schools; and approving a budget adjustment recognizing the grant revenue.
- 16. American Recovery and Reinvestment Act (ARRA):** A resolution authorizing the Fayetteville Fire Department to apply for an American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Station Construction Grant in the amount \$5,000,000.00 for the replacement and relocation of Fire Station # 2.

B. Unfinished Business:

- 1. Hyland Park Phase II – Water Storage Tank:** A resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on Lot 22 of Hyland Park Phase II.

This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.

- 2. Hyland Park Phase II – Declaratory Judgment Action:** A resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construct a water tower thereon.

This resolution was tabled at the June 9, 2009 City Council meeting to the June 16, 2009 City Council meeting.

- 3. Bid # 09-34 Runway Safety Area Improvement Project:** A resolution awarding Bid # 09-34 and approving a contract with Sweetser Construction, Inc. in the amount of \$3,017,900.15 for construction of the Runway 16 Runway Safety Area Improvement Project. *This resolution was tabled at the May 5, 2009 City Council meeting to the May 19, 2009 City Council meeting. This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting.*

This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.

- 4. McClelland Consulting Engineers, Inc.:** A resolution to approve Task Order No. 1 for engineering services by McClelland Consulting Engineers for Runway 16 Safety Improvements in the amount of \$231,100.00 and to approve a budget adjustment of \$231,096.00. *This resolution was tabled at the May 19, 2009 City Council meeting to the June 2, 2009 City Council meeting.*

This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.

5. **Utilities Department Positions:** A resolution to amend the 2009 Budget to authorize and fund two full time employee positions for project design and management of Utilities Department projects and to approve the attached budget adjustment to reduce the overall Water and Sewer Budget by \$250,000.00.

This resolution was tabled at the June 2, 2009 City Council meeting to the June 16, 2009 City Council meeting.

C. New Business:

1. **Procter & Gamble:** A resolution accepting a donation from Procter & Gamble in the amount of \$30,000.00 to fund a portion of the development costs for a Dog Park at Bryce David Park; and approving a budget adjustment recognizing the revenue.
2. **VAC 09-3269 (Schmitt, 298):** An ordinance approving VAC 09-3269 submitted by Jorgensen and Associates for property located at 2614 Timberglen Lane to vacate an 875 square foot portion of a utility easement along the west side of the subject property.
3. **VAC 09-3281 (Means/1661 Cypress Ln., 370):** An ordinance approving VAC 09-3281 submitted by David Means for property located at 1661 East Cypress Lane to vacate an 84.4 square foot portion of a utility easement along the north side of the subject property.
4. **VAC 09-3282 (U of A 20th Street, 601):** An ordinance approving VAC 09-3282 submitted by Allen Young for property located at the University of Arkansas Research and Technology Park and South School Avenue to vacate approximately 86,684 square foot of right-of-way for 20th Street, lying within the subject property.
5. **Quitclaim Deed for 20th Street and Access Land:** A resolution to approve two quitclaim deeds to the University of Arkansas to convey the vacated 20th Street and a second small area which had been retained for access.
6. **RZN 09-3271 (Sale Barn/Campus Crest LLC, 562):** An ordinance rezoning that property described in rezoning petition RZN 09-3271, for approximately 8.87 acres, located at the old Washington County Sale Barn, north and east of 11th Avenue and Government Avenue from I-1, Heavy Commercial/Light Industrial, to DG Downtown General.
7. **Box Avenue Appeal:** An ordinance rezoning that property described in rezoning petition RZN 09-3280, for approximately 1.20 acres, located at the northwest corner of Mission Boulevard and Box Avenue from R-O, Residential Office, to C-1, Neighborhood Commercial.
8. **Oakbrooke Community Appeal:** Appeal the City Engineers decision to deny a request to construct a retaining wall along the public right of way on all lots within the Oakbrooke Subdivision.

- 9. Willoughby Road Rezoning:** An ordinance rezoning that property identified as Parcels 765-15560-000 and 765-15560-001, for approximately 15.2 acres, located south of Willoughby Road and 0.8 miles east of Highway 71B from I-2, General Industrial to R-A, Residential Agricultural.

Agenda Additions:

Announcements:

- 1. City Council Tour: June 15, 2009 - RZN 09-3271 (Sale Barn/Campus Crest, LLC.)**

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. 16
American Recovery and
Reinvestment Act (ARRA)
Page 1 of 16

Added at
Agenda Session
6-9-09
Consent

City Council Agenda Items
and
Contracts, Leases or Agreements

6/16/09
July 7, 2009

City Council Meeting Date
Agenda Items Only

TONY JOHNSON

FIRE

FIRE

Submitted By

Division

Department

Action Required:

Permission to apply for an ARRA (American Recovery and Reinvestment Act) Assistance to Firefighters Fire Station Construction grant in the amount of \$5,000,000. This grant program does not require any matching funds.

\$ -
Cost of this request

\$ -
Category / Project Budget

Federal Grant Revenues
Program Category / Project Name

1010.0001.4309.00
Account Number

\$ -
Funds Used to Date

Revenue
Program / Project Category Name

Project Number

\$ -
Remaining Balance

General
Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

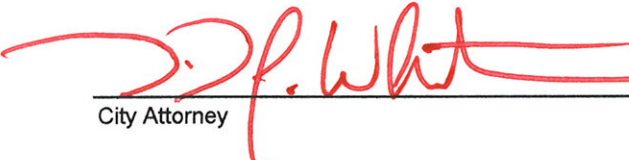

Department Director

6-4-09
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

6/5/09
Date


Finance and Internal Services Director

6-5-09
Date

Received in City
Clerk's Office

ENTERED


Chief of Staff

6-5-09
Date

Received in
Mayor's Office

ENTERED
6/5/09
P.H.


Mayor

6/8/9
Date

Comments:



The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701

Phone (479) 575-8365 Fax (479) 575-0471
www.accessfayetteville.org

A. 16
American Recovery and
Reinvestment Act (ARRA)
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June 4, 2009

To: Mayor Jordan
Fayetteville City Council

From: Tony Johnson, Fire Chief *T.J.*

Subject: Request to Make Grant Application

The Department of Homeland Security, Federal Emergency Management Agency has announced that money is available through the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) in the amount of \$210,000,000 to fund the construction and modification of fire stations. The program will be administered by the Assistance to Firefighters Program Office under FEMA's Grant Programs Directorate. The Grants under this new program will be awarded directly to the fire departments on a competitive basis.

I am requesting permission to apply for \$5,000,000 for the replacement and relocation of fire station #2 which is located at 708 N. Garland, adjacent to the U of A campus. This is a "true" grant, and if awarded, will not require a funding match from the City of Fayetteville. Fire station #2 has been targeted by the Fire Station Concept and Deployment Plan of 2003 for replacement and relocation. This is the same plan that added Station #7 in 2005, Station #3 in 2008, and relocated Station #5 in 2007.

A site has yet to be determined for the new fire station however, the fire department is working on securing a site that will optimize the response times for the immediate response area and the City as a whole.

Thanking you in advance for your consideration and approval.

Honor, Commitment, Courage;
Our people make the difference!

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE FIRE DEPARTMENT TO APPLY FOR AN AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) ASSISTANCE TO FIREFIGHTERS STATION CONSTRUCTION GRANT IN THE AMOUNT OF \$5,000,000.00 FOR THE REPLACEMENT AND RELOCATION OF FIRE STATION #2.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Fire Department to apply for an American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Station Construction Grant in the amount of \$5,000,000.00 for the replacement and relocation of Fire Station #2.

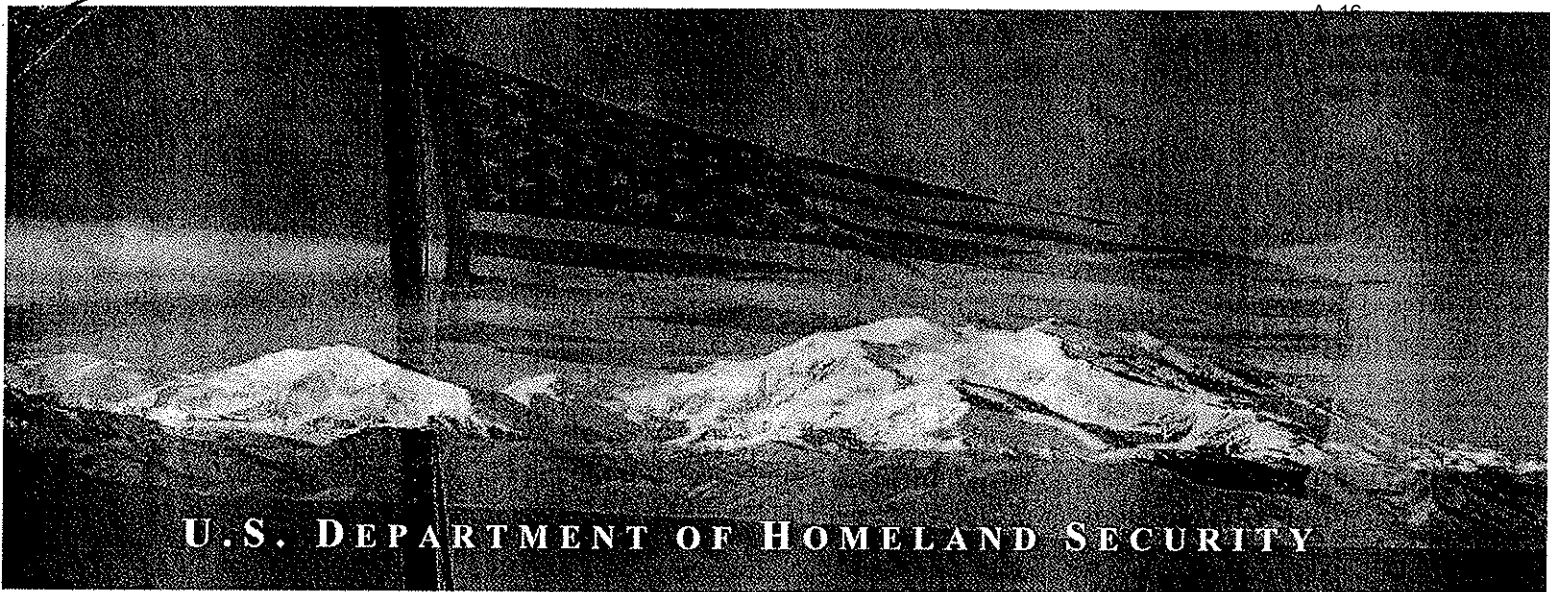
PASSED and **APPROVED** this 16th day of June, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



U.S. DEPARTMENT OF HOMELAND SECURITY

FISCAL YEAR 2009

**A.R.R.A. Assistance to Firefighters
Fire Station Construction Grants**

GUIDANCE AND APPLICATION KIT

MAY 2009



U.S. DEPARTMENT OF HOMELAND SECURITY

PART I.

FUNDING OPPORTUNITY DESCRIPTION

Assistance to Firefighters Fire Station Construction Grants (FSC) provide financial assistance directly to fire departments on a competitive basis to build new or modify existing fire stations in order for departments to enhance their response capability and protect the community they serve from fire and fire-related hazards. The authority for FSC is derived from the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5). Congress appropriated a total of \$210 million for this Fiscal Year (FY) 2009 program. Our primary goal is to help fire departments meet their firefighting and emergency response needs. FSC seeks to support organizations lacking the tools and resources necessary to effectively protect the health and safety of the public and their emergency response personnel with respect to fire and all other hazards.

The purpose of this package is to provide an overview of the FSC, the formal grant guidance and the application materials needed to apply for funding under this program. An explanation of the Department of Homeland Security (DHS) requirements for implementation of a successful application is also included. Our job at DHS is to provide clear guidance and effective application tools to assist applicants. Our customers are entitled to effective assistance during the application process and transparent, disciplined management controls to support grant awards. DHS intends to be good stewards of precious Federal resources and common-sense partners with our first responder colleagues.

A. Federal Strategy

The FSC Program is an important part of the Administration's larger, coordinated effort to stimulate the economy while strengthening homeland security preparedness. The National Preparedness Guidelines, which comprise an all-hazards vision regarding the Nation's four core preparedness objectives: prevent, protect, respond and recover from both terrorist attacks and catastrophic natural disasters, and their associated work products are of particular significance.

The National Preparedness Guidelines define a vision of accomplishment, and provide a set of tools to forge a unified national consensus about what to do and how to work together at all levels of government in order to effectively respond to all hazards. First responder participation is paramount to the Guidelines' success. DHS expects its first responder partners to be familiar with the National Preparedness Guidelines, and to consider these guidelines when assessing their needs and developing their grant requests.

B. Priority Development Process

As with other grant opportunities for fire departments, DHS consulted with a panel of fire service professionals representing the nine major fire service organizations to recommend funding priorities and other implementation criteria for FSC. This criteria development panel was charged with making recommendations to DHS regarding the creation of funding priorities, as well as developing criteria for awarding grants. These nine organizations are:

- Congressional Fire Services Institute (CFSI)
- International Association of Arson Investigators (IAAI)
- International Association of Fire Chiefs (IAFC)
- International Association of Firefighters (IAFF)
- International Society of Fire Service Instructors (ISFSI)
- National Association of State Fire Marshals (NASFM)
- National Fire Protection Association (NFPA)
- National Volunteer Fire Council (NVFC)
- North American Fire Training Directors (NAFTD)

For this funding opportunity, we asked additional stakeholder organizations to provide input into the FSC program priorities. The following non-fire service organizations provided feedback for our proposed priorities:

- National Association of Counties
- National Governor's Association
- National League of Cities
- U.S. Conference of Mayors

This document reflects DHS' incorporation of the recommendations provided by the criteria development panel with respect to the priorities, direction and criteria for awarding grants. All of the funding priorities for the FSC are designed to address first responder safety, enhance response capabilities and/or expand mutual aid.

In evaluating requests for assistance under the FSC, DHS takes into account the benefit to be derived from the costs of the grant activity when considering each application for award. DHS has determined a risk-based focus achieves this cost-benefit consideration. In addition, frequency of use and level of population protected are measures of risk as well as indicators of the benefit derived from an award. Therefore, DHS provides a higher level of consideration to applicants with significant levels of incidents and those who protect large populations relative to other applicants, regardless of the type of community served.

The specific criteria for our highest priorities are set forth in *Part I. Section C. Funding Priorities* of this guidance.

C. Funding Priorities

The purpose of FSC is to provide economic stimulus in the form of jobs and increase the safety of the firefighters and the communities they serve. As such, all program priorities focus on the timeliness of the implementation of the construction project, the effect the new or modified facility will have on the health and safety of the firefighters as well as the benefit the new or modified facility will have on the protection of the community.

Since one of the priorities of the ARRA is to stimulate the economy by providing jobs, DHS will provide the high consideration to departments serving communities that have suffered the highest increases in joblessness rates. To assess this criterion, the change in the joblessness rates from 2007 to 2008 in your county or community will be compared.

We provide the highest consideration to fire departments that own or have otherwise already acquired the land where they plan to construct or modify their fire station. We also provide the highest consideration to requests where the applicant's land is already zoned for the new or modified structure and where the applicants have already obtained the permits for their project including any State or locally required environmental assessments. However, no preference is given to requests for constructing new stations or to requests for modifying/improving stations already in existence.

While the type of the project is not considered (i.e., DHS will not differentiate between new construction and modifications), the **purpose** of the construction or modification will have a bearing on the award determination. In this regard, the ARRA has two, equally high priorities:

- 1) To replace unsafe or uninhabitable structures regardless of whether the project calls for the construction of a new building or the rehabilitation of an existing structure. Applicants claiming unsafe or uninhabitable structures may be required to provide documentation regarding the nature of the health or safety deficiencies. Any health-code violations or orders to vacate unsafe structures must pre-date the enactment of the ARRA for consideration.
- 2) To fund projects expanding fire protection coverage to meet increased service demand in compliance with NFPA 1710 or 1720. In these instances, expanding fire protection coverage under a community's capital improvement plan will receive higher consideration than expansion projects not engaged in capital improvement planning.

The next priority is to fund projects modifying or expanding existing structures to provide sleeping quarters and/or amenities for full-time occupancy (to allow for habitation 24 hours per day). A slightly lower priority is to fund modifying or expanding existing structures to accommodate support functions such as

communications. The lowest priority is to fund projects replacing or expanding habitable structures that are cramped or inefficiently configured for operation.

Another community characteristic that will be assessed is the community's status under the National Flood Insurance Program (NFIP). Applicants serving communities not in good standing under NFIP receive lower consideration than departments serving those communities in good standing or those which have not been mapped.

In determining which requests should be funded, the ultimate result of the project will be considered. The criteria development panel recommended and DHS concurred that the highest priority is projects providing a safer working environment for the department's firefighters or projects providing improved response times to the population the department protects. DHS believes expanding a structure to provide amenities for full-time occupancy in order to meet service demand would comply with this criterion by improving response times. Lower priorities are assigned to projects expanding an existing structure to house support functions such as communications.

Based on recommendations provided by the criteria development panel, additional consideration is provided to projects that will be designed and built according to the most recently approved requirements, codes, and standards developed by the International Code Council (ICC) as well as NFPA standards that involve fire station construction. These standards include sprinkler systems (in accordance with NFPA 1, chapter 13) as well as smoke/carbon monoxide detection systems and vehicle exhaust extraction systems (in accordance with NFPA 1500, chapter 9). FSC projects must include these features in order to receive consideration. Also, additional consideration will be provided to projects that include sleeping quarters and other amenities to allow for full-time occupancy – 24 hours per day, seven days a week, 365 days a year.

The timing of the project would have an effect on both stimulating the local economy in addition to improving protection of the firefighters and the community. As such, projects capable of starting immediately upon receipt of DHS approval receive higher priority. Also, projects that will be completed on an expedited schedule will receive higher priority.

The length of time your department has been attempting to build a new station would be an indication of need. Departments having permits or that have forgone capital building plans for extended periods of time receive higher priority than departments that do not yet have permits or that have not yet forgone their capital building plans. Projects already having the utilities on or adjacent to, the property where the construction will occur receive a higher consideration than projects not having immediate utility access.

There is no cost-share required under the FSC. However, the willingness or ability of a community to contribute to the project is a desirable attribute. A community

contribution demonstrates commitment, enhances the award and provides a greater cost-benefit to the project. As such, applicants who contribute toward the project receive higher consideration than applicants who are relying entirely on the grant funding for their project. The higher the percentage of the contribution, the higher the consideration the grantee receives for funding. Grantees will be obligated to provide the cost-share if they pledged to provide the cost-share in their application. Be advised that the cost-share declared in the application is only applicable to the eligible costs of the project. Costs associated with ineligible portions of the construction project – such as the cost of a ballroom or law enforcement annex – are not considered to be part of the grantee's cost-share.

As stated above, one of the primary concerns of this program is firefighter safety. In addition, one of the program's priorities is to improve a department's response times. The criteria development panel recommended and DHS agreed training is critical for achieving both firefighter safety and effectively improving response. As such, the FSC will take applicants' training levels into consideration when award decisions are made. Applicants with significant numbers of firefighters trained to NFPA 1001 receive higher consideration than departments with low compliance.

Other department characteristics taken into consideration are the applicant's call volume, the population protected by the department, whether or not the applicant provides EMS service in addition to fire suppression, and the positive affect the new structure will have on the department's ability to improve mutual aid. DHS determined the frequency of use and the size of population protected are both a measure of benefits derived from any award. Higher consideration is given to departments with higher call volume and a higher population protected. Higher consideration is also provided to applicants who, if awarded, will improve their ability to provide mutual aid.

With regard to protection of wetlands and floodplain management, DHS will not support development or new construction or substantial renovation in wetlands, designated floodways or velocity zones. Fire stations can be newly constructed or undergo substantial renovation in flood plain areas, provided that the clearance process steps of Executive Order 11988 is followed (e.g., no other reasonable alternative location exists) and provided that all appropriate flood plain management requirements of National Flood Insurance Program participation are followed. This would include protection of the new construction or substantial renovation. Fire stations are considered critical facilities for flood plain management purposes, and therefore new construction or major renovations must be protected to the 500 year flood level. DHS will take the location of the modification and/or new construction into account when evaluating the viability of any project.

PART III. ELIGIBILITY INFORMATION

A. Eligible Applicants

Eligible applicants for FSC are limited to non-Federal fire departments operating in any of the 50 states plus the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa and Puerto Rico are eligible for funding. Any authority having jurisdiction (AHJ) may apply on behalf of the fire department if the AHJ has authority over the fire department and will be contributing toward the project administratively, financially or both.

A "fire department" is defined as an agency or organization having a formally recognized arrangement with a State, territory, local or tribal authority (city, county, parish, fire district, township, town or other governing body) to provide fire suppression to a population within a fixed geographical area on a first-due basis.

For the purposes of these grants, DHS considers two or more separate fire departments sharing facilities as one organization. This determination is designed to avoid duplication of benefits. DHS believes two or more fire departments sharing facilities should be able to satisfy all of their facility needs with one application. Therefore, if two or more organizations sharing facilities each submit an application, all applications will be deemed ineligible.

Non-Federal airport and/or port authority fire departments are only eligible if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression on a first-due basis outside the confines of the airport or port facilities. Airport or port authority fire departments whose sole responsibility is suppression of fires on the airport grounds or port facilities are not eligible for funding under FSC.

B. Ineligible Applicants

For the FY 2009 program year, each eligible applicant may only submit one FSC application. If an eligible applicant submits multiple applications, all applications will be deemed ineligible.

Other applicants who are ineligible for funding include:

- Fire departments that are Federal, or contracted by the Federal government, whose sole responsibility under a formally recognized agreement is suppression of fires on Federal installations or land
- Non-firefighting organizations such as EMS or rescue organizations

- Fire stations that are not independent entities, but are part of, controlled by or under the day-to-day operational direction of a larger fire department or agency
- Fire departments that are for-profit departments (*i.e.*, do not have specific nonprofit status or are not municipally based)
- Airport fire departments
- Fire training centers
- Emergency communications centers
- Auxiliaries and fire service organizations or associations
- Dive teams and search and rescue teams, or any similar organizations that do not have fire suppression responsibilities

C. Cost Sharing

There are no cost share requirements under FSC. However, if the applicant pledges to contribute toward the construction project in their application, as a condition of award, they are required to contribute to the final costs of project in the same ratio pledged in the final approved application. Costs associated with ineligible portions of these construction projects (such as the addition of a ballroom) are not eligible, thus cannot be considered as part of any cost-share.

D. Allowable Expenses and Cost Restrictions for Fire Station Construction

The only activities funded by the FSC are the building of new or modification of existing fire stations. Construction of any facilities other than fire stations (*e.g.*, structures for training or emergency operations centers) is not eligible for funding.

D.1. Eligible Items

When formulating the costs associated with a building modification, the applicant should be aware of costs for code improvements that may be triggered by “substantial improvement” stipulations under the National Flood Insurance Program’s regulations and/or local building codes. Generally, reconstruction, rehabilitation, addition, or other improvement of a structure where the cost exceeds 50 percent of the market value of the structure may trigger other code upgrade requirements that the applicant may have to incorporate into their project.

Within the fire stations built or modified under the FSC, the following items, activities or expenses are eligible:

- Building construction
- Environmental assessment
- Building site preparation, including demolition, if necessary

- Design, planning, and engineering expenses incurred **after** award
- Expenses necessary to comply with the most current edition of NFPA1500
- Expenses necessary to comply with the locally adopted building, fire, plumbing, mechanical and electrical codes.
- Sprinklers or other life safety and fire protection systems
- Vehicle exhaust extraction systems
- Decontamination areas
- Space for training (up to 600 square feet)
- Space for gender-segregated sleeping
- Gender-segregated restrooms
- Space for exercise equipment
- Kitchens
- Kitchen appliances
- Dining/eating area
- ADA compliance
- Gear racks, storage and shelving for gear/equipment
- Internet cabling
- Energy conservation systems (Leadership in Energy and Environmental Design - LEED™)
- Renewable energy for HVAC and power systems

D.2. Ineligible Items

- Land acquisition
- Cost overruns
- Fire station staffing
- Pre-award costs (including but not limited to design, planning, and engineering expenses incurred **prior** to award)
- Grant writing fees
- Space for public use (ballrooms, community meetings, fund raising)
- Furnishings (including office/training equipment)
- Exercise equipment
- Firefighting equipment
- Personal protective equipment
- Washers/extractors
- Apparatus
- Vehicle mounted exhaust extraction systems
- Landscaping
- Security systems
- Decorative items (curtains, wall hangings, etc.)
- Projects that duplicate any other Federal awards
- Demolition costs not related to the funded project

The cost for space for any activities that are not directly related to the daily operation of the fire department – such as community meeting space, ballrooms,

administrative support, or other governmental functions such as police or emergency management annexes – are not eligible for Federal funding. These types of amenities, facilities, or functions may be included in the overall design and construction of the station project, but the costs would not be eligible for Federal reimbursement. Eligible costs will be limited to the cost of the operational space. The eligible cost of the construction will be total cost net of the cost of the non-operational or otherwise ineligible space. The cost of the non-operational space will be based on square footage of the identified ineligible space compared to the overall project square footage of the entire project.

The ability of the department to use non-operational space for eligible activities, such as training, does not mean that the space is eligible. For example, a room that is 50 feet by 100 feet could be used for training, but it is likely that the primary purpose of that room would be for social or community events, not for training. We will not fund space that is clearly meant for non-operational use.

While the cost of non-operational space is not eligible for Federal funding, it does contribute to the purpose of the ARRA (i.e., creating and/or sustaining jobs). As such, DHS will not penalize any applicant that includes additional, non-fire operational space in their construction project. However, applicants will be required to identify the additional costs associated with the non-operational space in their application. Again, the cost of the non-operational space may be incorporated into a structure, but the costs will not be eligible for Federal funding nor inclusion as a local cost-share. The costs for the non-operational space will be assessed during DHS' technical review and removed from the overall approved project costs. The costs will be determined on a prorated basis – the square footage of the non-operational space compared to the total square footage of the structure.

E. Other Allowable Costs

This section describes additional costs that may be paid using FSC Grant funds. Applicants should be aware all costs will be taken into consideration when evaluating the benefits of the funding being requested. Expenses that support the administration or oversight of the project over and above the direct construction costs are eligible, but if excessive, may affect the overall evaluation of the application.

1. Administrative Costs: Administrative costs are allowable under any of the program areas listed above in accordance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, or OMB Circular A-122, Cost Principles for Nonprofit Organizations, as applicable. (For more information about Circulars, go to 2 CFR Part 225 or Part 230, respectively, or to www.whitehouse.gov/omb/circulars.) Applicants may apply for administrative costs if the costs are directly related to the implementation of the project(s) for which they are applying. Administrative costs are identifiable costs directly associated with the implementation and management of the grant and cannot exceed three percent (3%) of the award.

2. Indirect Costs: Indirect costs are those incurred for common or joint objectives that cannot be readily identified with a particular final cost objective. A cost may not be allocated to an award as an indirect cost, if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost. In order to charge indirect costs to the grant, an applicant must have a federally approved indirect cost rate. Documentation of a federally approved indirect cost rate agreement must be submitted to DHS prior to submitting any claims for reimbursement of indirect costs. In order to be considered allowable, the rate must be consistent with its established terms and charged appropriately to the applicable base. For example, some indirect cost rates may not apply to capital procurements.

3. Audit Costs: Grantees must comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations. Recipients of Federal funding that expend more than \$500,000 in Federal funds (from all Federal sources) in their fiscal year are required to have a single audit for each year in which their level of expenditures exceeds the threshold. (For more information about OMB Circulars, go to www.whitehouse.gov/omb/circulars.) If a single audit is required, a portion of the audit cost would be allowable, if included in the application budget and should be charged a prorated share of the costs of the single audit to the grant. For example, if you expend \$100,000 from the FSC and \$400,000 from the Forestry Service during your fiscal year, DHS will allow you to charge one-fifth of the audit cost to the FSC Grant. DHS does not require any other audits; therefore, the grantee cannot charge any other audit expenses to the grant.

4. Costs for Historic and/or Environmental Assessments: Cost incurred in order to comply with guidance on environmental planning and historic preservation (EHP) requirements for grant funded projects involving new construction, renovation, and modifications to buildings and structures that are 50 years old or older – including demolition – are eligible. The projects funded under the FSC have the potential to affect environmental resources and historic properties through ground disturbance, impact to wetlands, floodplains, coastal zones, and other water resources, alteration of historically-significant properties, and impact to threatened and endangered species. As such, the costs associated with compliance with the EHP are eligible if incurred after award.

F. Reasonableness of a Request

The peer review panelists review all applications in the competitive range and judge each application on its own merits. Also, the costs will be reviewed by technical specialists that are familiar with construction projects. The panelists and the technical specialists will consider all expenses budgeted, including administrative and indirect costs, as part of the cost-benefit determination, and may recommend appropriate adjustments. Regardless of the eligibility of any costs requested, DHS reserves the right to reduce any requests for assistance, in whole or in part, that they deem to be excessive or otherwise contrary to the best interests of this program, i.e., DHS may reduce the number of the projects requested contained in an application

or may reduce the funding on a specific project that includes budgeted items that are extraneous or ineligible.

Applicants who submit false information with their applications, or misrepresent their organizations in any material manner, will have their applications deemed ineligible by DHS and referred to the DHS' Office of Inspector General (OIG) for further action, as appropriate.

City of Fayetteville Staff Review Form

B. ①
Hyland Park Phase II – Water
Storage Tank
Page 1 of 16

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

6/9/2009

City Council Meeting Date
Agenda Items Only

David Jurgens

Submitted By

Water & Wastewater

Division

Utilities

Department

Action Required:

Approval of a resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on lot 22 of Hyland Park Phase II.

\$ -

Cost of this request

\$ 2,189,147

Category / Project Budget

Mt Sequoyah Press Plane Imprvmt

Program Category / Project Name

5400.5700.5314.02

Account Number

\$ 139,888

Funds Used to Date

Water and Wastewater

Program / Project Category Name

04036-1

Project Number

\$ 2,049,259

Remaining Balance

Water/Sewer

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

D. Jurgens
Department Director

2 Jun 09
Date

Previous Ordinance or Resolution # 151-04

Original Contract Date: 10/5/2004

[Signature]
City Attorney

June 2, 2009
Date

Original Contract Number: 900

Paul A. Behr
Finance and Internal Services Director

6-2-2009
Date

Received in City
Clerk's Office

ENTERED
6-2-09 USM

Don Man
Chief of Staff

6/2/09
Date

Received in
Mayor's Office

ENTERED
6/2/09
PH

Donald Jordan
Mayor

6/2/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan
Fayetteville City Council

Thru: Don Marr

From: David Jurgens, Utilities Director
Fayetteville Sewer Committee



Date: June 2, 2009

Subject: Approval of a resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on lot 22 of Hyland Park Phase II

RECOMMENDATION

Staff recommends approval a resolution to accept and approve the City Council Sewer Committee's decision to begin construction plans for a 500,000 gallon water storage tower on lot 22 of Hyland Park Phase II.

BACKGROUND

Lot 22 of the Hyland Park Phase II subdivision was designated as the site for the water storage tank when the subdivision plat was filed in July 1974, with the following statement on the plat: "Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become the property of the City of Fayetteville."

DISCUSSION

At a Sewer Committee meeting on August 15, 2008, the Committee reviewed all viable tank alternatives and directed staff to proceed with negotiations with the Hyland Park Homeowner's Association regarding a potential land swap for another suitable property near the site. After information was sent to the HOA in September, 2008, no response was received from the HOA. In response to a letter sent by the City on 15 April, 2009, the HOA stated their refusal to negotiate or support the City's actions in any way. Negotiations have recently resumed, but a firm decision is required in order to proceed with tank construction.

Additional detail is included in the enclosed fact sheet.

A full presentation of the issues will be made at the City Council meeting.

BUDGET IMPACT

There is currently \$2,049,259 in the impact fee fund and \$128,549 in the Water/Sewer fund budgeted for this project.

MAY 29, 2009

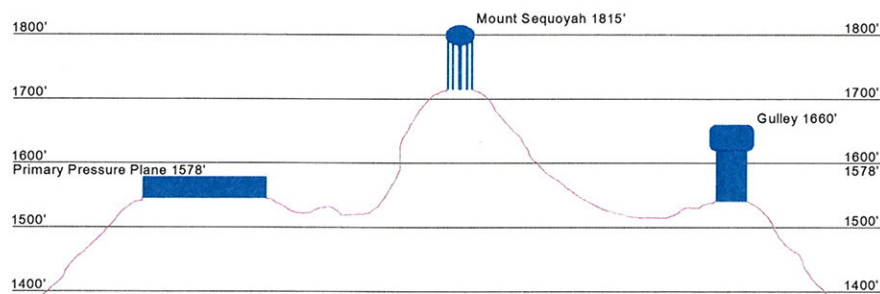
CONTACT: David Jurgens, P.E.
Utilities Director
479-575-8330
djurgens@ci.fayetteville.ar.us

MT. SEQUOYAH PRESSURE PLANE WATER STORAGE FACT SHEET

General

The City of Fayetteville provides water to its customers to meet three basic needs in the following priority order: domestic water consumption (including commercial and industrial uses), fire protection, and irrigation. This service requires a combination of water storage tanks, pump stations, and many miles of pipe.

Elevated water storage tanks, and pump stations to fill them, are required to provide adequate water flow and pressure to higher elevations of town. These tanks, like the one on Mt. Sequoyah, ensure consistent pressure and adequate volume to meet all three of the basic water needs. The majority of our customers receive pressure from the primary pressure plane which contains 27 million gallons of water. Residents on the highest elevations in the City receive water from the Mt. Sequoyah pressure plane, served by the tank on Skyline Drive, holding 250,000 gallons. Residents on the higher area east of the City, in the area around Sassafras Road, are served by the Gulley tank, holding 750,000 gallons of water. These relative elevations are shown below.



Comparison of Water Storage Elevations in Fayetteville

Mt. Sequoyah Pressure Plane Current Condition

In evaluating our system, the City identified a significant shortfall in the higher elevations including the areas of Mt. Sequoyah, Hillcrest, Rockwood, Applebury, Ridgeway, Hyland Park, and Canterbury. The entire affected area, shown on the attached map, contains 1,817 water connections and 162 fire hydrants.

The largest impact of this shortfall is that the entire area has inadequate fire protection, especially during summer peak water usage periods. The general residential fire protection requirement is 1,500 gallons per minute. At this time, fewer than 5% of the hydrants in this area can meet this requirement during peak usage. The shortfall also impacts our ability to provide consistent domestic water pressure and flow during summer peak usage periods. Customers at the highest elevations have very low pressure and flow during these times.

Mt. Sequoyah Pressure Plane Solution

To correct this shortfall, the City must build a water storage tank which will hold approximately 500,000 gallons to meet regulatory and industry design standards and meet water demand requirements during hot weather. This tank must be located on a hilltop, as the water pressure in our system is provided by gravity. The tank elevation is required to be 1815 feet above sea level, to provide adequate pressure and match the existing elevated water storage tank on Mt. Sequoyah, which is on this same system. Using ground storage tanks and/or pumps, both separately and in combination, has been evaluated, and will not meet the requirements due to the size of the area being served, the volume of water required, and the age of the existing water piping system.

In July, 2005, McClelland Consulting Engineers developed a Preliminary Engineering Report of alternatives; costs are shown below. The Arkansas Department of Health identified that our current water storage of 250,000 gallons is approximately 25% of what is needed, and that “additional storage needs to be constructed.” The ADH letter of April 7, 2008 states “The Mt. Sequoyah area does not have adequate storage for the water demand in the area and the city needs to address the situation.”

McClelland’s report identified four possible locations and cost estimates, shown below and on the attached map. These estimates are based on March 2008 prices. They do not include a \$450,000 - \$660,000 pumping station that has to be installed no matter which alternative is selected; nor do they include the cost of purchasing land.

Site	General Location	Height	Pipe Length		Cost
			Required		
1	Hyland Park Phase 2 Platted Tower Lot 22	139’	2,900’		\$ 1,894,425
2	Skyline Dr. by existing Mt. Sequoyah Tank	101’	12,500’		\$ 3,845,760
3	South end of Crest Drive off Rockwood Tr.	109’	9,300’		\$ 3,413,035
4a	NW of Hyland Park Phase 2 Tennis Court	143’	3,500’		\$ 2,126,740

From the water hydraulics/engineering perspective, sites 1 and 4a, on the top of Hyland Park Hill, provide by far the best physical location as they place the storage closer to both the water pump stations that fill the tanks and to the areas of greatest use, balancing the system and providing the most reliable service. They also significantly reduce the amount of piping that would have to be constructed throughout the entire area. With a tank and pump station on both of the prominent hilltops in the system, storage is optimized to meet demand. Site 2, with the new tank being located adjacent to the existing tank on Skyline Drive, is the least desirable alternative. Close-ups of the approximate locations are shown in the attached aerial photos.

This project also has a significant impact on the City’s overall fire protection, or ISO, rating, which directly impacts homeowners’ insurance prices. The City is currently at a 4 rating. By adding fire stations, upgrading fire equipment, and improving the water system, we believe this rating can be improved City-wide. Not having this water storage tank project underway would probably negate the other improvements and keep the City at its current rating or cause the rating to be degraded, causing insurance rates city-wide to increase.

Attachments: Mt. Sequoyah Pressure Plane Map with Tank Sites
Tank Site Close-up Aerial Photos



**Water Tank Options
Mount Sequoyah Pressure Plane**

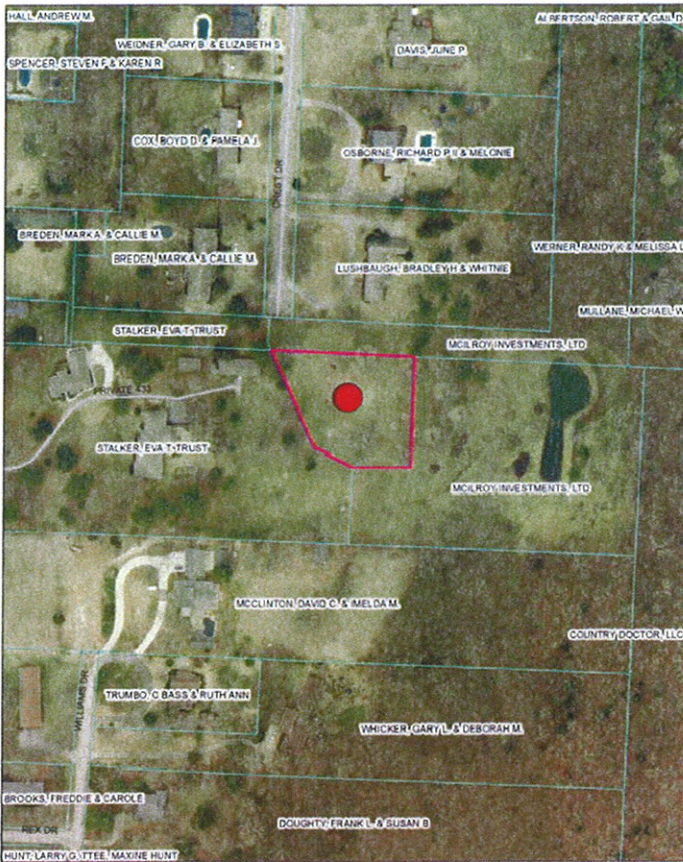




Alternative No. 1



Alternative No. 2



Alternative No. 3



Alternative No. 4a



RESOLUTION NO. _____

**A RESOLUTION TO ACCEPT AND APPROVE THE CITY
COUNCIL SEWER COMMITTEE'S DECISION TO BEGIN
CONSTRUCTION PLANS FOR A 500,000 GALLON WATER
STORAGE TOWER ON LOT 22 OF HYLAND PARK PHASE II**

WHEREAS, the City Council Sewer Committee considered the scientific, legal, practical and location issues to fulfill the City's demonstrated need for additional water storage in the Mt. Sequoyah Pressure Plane during several lengthy meetings in 2008; and

WHEREAS, the City Council Sewer Committee on August 21, 2008 unanimously determined that the most cost effective, efficient, and safest solution is to build an additional 500,000 gallon water tower on or near Hyland Park Phase II; and

WHEREAS, in response to some suggestions or proposals of some members of the Hyland Park Homeowners Association, the City Council Sewer Committee asked City staff to examine the possibilities and propose any other sites near Lot 22 of Hyland Park Phase II which could be substituted for Lot 22 if the Hyland Park Homeowners Association or other private entities obtained and dedicated such acceptable site to the City of Fayetteville; and

WHEREAS, over eight months have elapsed since two alternate sites were made known to the Hyland Park Homeowners Association which responded to Mayor Jordan's "reminder" letter of April 15, 2009, about the "potential exchange arrangement" with a clear refusal for any cooperation as the "unanimous" position of this Association"; and

WHEREAS, during this Special City Council meeting, the City Council listened to Fayetteville citizens, engineers, the Fayetteville Fire Chief, the Fayetteville Water and Wastewater Director and other interested persons discuss the need for additional water storage, domestic water pressure issues, water necessary for fire fighting capability, fire insurance rate issues, hydraulic considerations for effectively serving residences on the two mountains in the Mt. Sequoyah Water Pressure Plane, aesthetic issues, and the historical record surrounding Hyland Park Phase II, its Final Plat and Lot 22.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby agrees with, accepts and reaffirms the well reasoned decision of the City Council Sewer Committee that the Mt. Sequoyah Water Pressure Plane, which serves not only the numerous homes on the upper level of Mt. Sequoyah, but also many homes and future home sites on the mountain upon which Hyland Park and Stone Mountain developments sit, is in urgent need of expanded water storage not only for adequate pressure for domestic use, but for fire fighting water.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby agrees with, accepts and reaffirms the well reasoned decision of the City Council Sewer Committee that the most cost effective, efficient and safe location for additional water storage is on or very near the top of the mountain occupied by Hyland Park Phase II.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby determines that since the Hyland Park Homeowners Association has refused and failed to propose or convey any other scientifically and financially sound alternative to Lot 22 of Hyland Park Phase II, City staff should proceed with construction plans for a 500,000 gallon water storage tower on Lot 22 which Note 3 of the Final Plat of Hyland Park, Phase 2 identified as: "3. Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become the property of the City of Fayetteville."

PASSED and APPROVED this 9th day of June, 2009.

APPROVED:

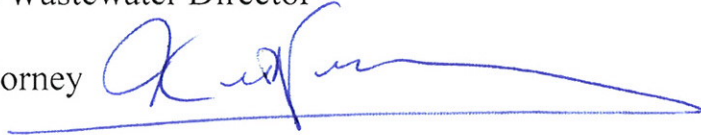
ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

TO: **Dan Coody**, Mayor
City Council
David Jurgens, Water & Wastewater Director

FROM: **Kit Williams**, City Attorney



DATE: **July 29, 2008**

RE: **Water tank site at Hyland Park**

I. History of the Dedication to the City of the Water Tank Site

The Preliminary Plat for Phase II of the Hyland Park Subdivision was reviewed on March 28, 1974 before the Plat Review Commission of the Fayetteville Planning Commission. Jim Lindsey presented the plat which had been substantially revised from an earlier submission. City employee "Bobbie Jones said the site for water facilities should be shown some way. I would suggest giving it a lot number with a note on the plat that that Lot has been approved by the Planning Commission as a site for a water storage tank or however it is to be used." ((Page 2 of the Minutes of Plat Review Committee of May 16, 1974.))

On May 16, 1974, the Plat Review Committee again considered Hyland Park, Phase 2. City Engineer Paul Mattke noted:

"Lot 22 will be a water storage site and will be deeded to the City. It will not be a utility easement; it will be public property. The note referenced to it should be changed to say that it is to become the property of the City of Fayetteville, then sketch in whatever easements the utility companies need.

...

"Make the note similar to the one used on Rosewood Estates. (That Plat had a note which read, 'Lot ____ has been approved

by the Planning Commission for construction of a water pump station.”) (Page 6 of the Minutes of Plat Review Committee of May 16, 1974.)

On May 28, 1974, the Planning Commission reviewed the proposed Final Plat of Hyland Park, Phase 2, Block 5 with President of Hyland Park, Inc., Jim Lindsey present and representing the developers. The Planning Commission unanimously approved the Final Plat by passing Resolution PC 23-74. Section 2 of that Resolution states:

“That the City of Fayetteville, Arkansas accept the final plat along with the land dedicated for streets and other public uses in the Hyland Park subdivision described as follows”

On June 4, 1974, the Fayetteville Board of Directors approved the Hyland Park Subdivision, Phase II, Block 5 and passed Ordinance No. 2015 which stated:

“That the City of Fayetteville, Arkansas, hereby accepts and confirms the final plat of Hyland Park Subdivision, Phase II, Block 5, hereby accepts and confirms the dedication of the streets and utility easements shown therein and hereby declares said street and utility easements to be public streets and utility easements and the Board of Directors hereby assumes the care, control and jurisdiction of same.”

On July 19, 1974, Nita Lindsey as Secretary for Hyland Park, Inc. signed a corporate resolution as shown on the Final Plat of Hyland Park, Phase 2, Block 5:

“Resolution Resolved that Nita Lindsey, Secretary of Hyland Park, Inc. is hereby authorized to execute the certificate of Ownership and dedication as shown on this Final Plat.”

Also on the recorded Final Plat is:

“Certificate of Ownership and Dedications: We hereby certify that we are the owners of the property shown and described herein and that we do hereby dedicate all streets, alleys, easements, parks and other open spaces to public or private use as noted.”

Both Jim and Nita Lindsey signed this Certificate of Ownership and Dedication on July 19, 1974.

“Notes: ...

3. Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become the property of the City of Fayetteville.”

The Final Plat also shows the:

“Certificate of Acceptance and Dedication: The dedications as shown on this subdivision are hereby accepted by the Fayetteville City Board of Directors on June 4, 1974.”

This was signed by Mayor Russell Purdy and attested to by City Clerk Darlene Westbrook on July 25, 1974. Thereafter, this Final Plat was filed for record at the Washington County Court House.

II. Analysis and Arguments of Hyland Park Residents

Hyland Park resident and outstanding attorney Connie Clark wrote a Memorandum arguing that the City of Fayetteville does not own Lot 22 (the water tank site) or has abandoned any rights it might have had to lot 22. She further asserts that “If the City of Fayetteville Condemns Lot 22, It Will Subject Itself To A Claim For Inverse Condemnation.” I will endeavor to respond to her assertions beginning with the most vital issue of ownership of the water tank site (Lot 22).

A. Does the City own Lot 22?

Ms. Clark notes that A.C.A. §14-301-102 states:

“No street or alley which shall be dedicated to public use by the proprietor of ground in the city shall be deemed a public street or alley, or to be under control of the city council, unless the dedication shall be accepted and confirmed by an ordinance specially passed for that purpose.”

Every year or so, our Planning Department compiles a list of dedicated streets and alleys which we then submit to the City Council for acceptance of the dedication of such streets by ordinance. I do not believe we have passed any such ordinance for easements, water or sewer mains, dedicated park land or other dedicated public space for the last couple of decades. I do not intend to recommend any such ordinance since I do not believe A.C.A. §14-301-102 applies to any dedications except for streets and alleys. This statute was apparently enacted by the Legislature (in 1875) to protect cities from having maintenance responsibilities for streets that could be unilaterally dedicated by a property owner. Not until the City Council accepted the dedicated street did the City have to assume the care and maintenance of the street.

The Property Owners Association admits “this statute refers only to streets and alleys,” but argues it should also be a requirement for any property dedicated to public use. Although I believe the Legislature had much stronger reasons to apply it to streets and alleys than to other public facilities, my opinion and the POA’s opinion of what the law should be is irrelevant. This statute requiring the dedication of streets and alleys to be accepted and confirmed by ordinance to be deemed a public street or alley refers **only** to streets and alleys.

“(T)he basic rule of statutory construction is to give effect to the intent of the legislature. **We construe a statute just as it reads, giving the words their ordinary and usually accepted meaning.**” Gonzales v. City of DeWitt, 357 Ark. 10, 159 S.W. 3d 298, 301 (2004) (citations omitted) (emphasis added)

This most basic rule of interpreting a statute shows it has no application to dedicated public property except for streets and alleys. Even if it did apply, Ordinance No. 2015 of June 4, 1974 and the Certificate of Acceptance of Dedication on the Final Plat signed by the Fayetteville Mayor and Clerk should dispel any issue concerning A.C.A. §14-301-102.

The POA then argues that the Certificate of Ownership and Dedication did not specifically name the water tank site (Lot 22): “We do hereby dedicate all streets, alleys, easements, parks and other open spaces to public or private use as noted.” While the POA emphasizes the “**or private**” use, I think the “**as noted**” is more important. The “Notes” specify that “Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become the property of the City of Fayetteville.” Lot 22 is clearly “open space” and does not

have the designation “common property” as Lot 23 across the street carries. That “common property” is specifically “intended for use by the Homeowners in Hyland Park for recreation ...” and is thus for **private** use. Lot 22 “the property of the City of Fayetteville” “for construction of a water tower” is expressly public, not private property.

The POA challenges the above interpretation of the language of the Final Plat by citing City of Sherwood v. Cook, 315 Ark. 115, 865 S.W. 2d 293 (1993).

“The two essential elements of a dedication are the owner’s appropriation of the property to the intended use and its acceptance by the public.” Id. at 296.

The POA contends “neither of these two elements has been met in our case.” I believe that Note 3 clearly **appropriates** Lot 22 for a “water tower” and “property of the City of Fayetteville.” The Certificate of Acceptance of Dedication by Mayor Purdy along with Ordinance No. 2015 constitutes its **acceptance**.

The Arkansas Supreme Court in the City of Sherwood case held:

“The dedication is sufficient if it appears, from a consideration of the plat as a whole, with reference to the surrounding circumstances, that the spaces were intended to be devoted to a public use.” Id. at 297.

Note 3 of the Final Plat makes it clear that Lot 22 is intended to become city property for construction of a water tower.

The POA also argues that Note 3 is not a dedication to the public, but instead the developers were “reserving unto themselves the right to sell Lot 22 to the City of Fayetteville for construction of a water tower.” This is clearly not what Note 3 nor the Certificate of Ownership and Dedication says.

Even if the POA could argue that the owner’s Certificate of Dedication and Note 3 were ambiguous, the rules of construction require any doubt to be construed in the City’s favor.

“(A)ny doubt or ambiguity in the meaning of a dedicatory plat is **construed most strongly against the dedicator** and to the reasonable advantage of the grantees of the dedicated

use, *i.e.*, so as **to benefit the public rather than the donor.**
City of Cabot v. Brians, 93 Ark. App. 77, 216 S.W. 3d 627,
631 (2005) (emphasis added)

Therefore, even if there can be some argument about exactly what the dedicator on the Final Plat meant in his Certificate of Ownership and Dedication and Note 3, the argument must be resolved “**so as to benefit the public rather than the donor.**” Id.

B. Has the City abandoned its rights to Lot 22?

The POA contends that any interest the City might have had in Lot 22 has been abandoned and lost through non-use and lack of fencing and maintenance. There appears little statutory or case law support for this assertion.

“(W)hen an owner of land files a plat and thereafter lots are sold with reference to it, such action constitutes an irrevocable dedication of any street or passageway for public use shown or indicated on the plat. Furthermore, whenever a dedication becomes irrevocable, a public authority can accept the dedication for public use **whenever the necessity occurs.** City of Sherwood v. Cook, 315 Ark. 115, 865 S.W. 2d 293, 297 (1993) (emphasis added)

Thus, a city need not begin any active public use of a dedication at any particular time, but is free to do so “whenever the necessity occurs.”

In the City of Cabot v. Brians case, the Brians tried to quiet title (acquire ownership rights) to an access easement designated as “reserved” for a future right of way on a final plat. They asserted they had used the parcel as their own and were entitled to it through adverse possession. A.C.A. §22-1-204 prohibits the adverse possession of realty against a city.

“(A)n owner of land who sells lots by reference to a plat, makes an irrevocable dedication of the streets, alleys, squares, parks, and ‘**other public places marked as such on the plat**’ to the public use and that the dedication “becomes irrevocable the moment that these acts occur ... where lots have been sold

by reference to a plat, ‘no formal acceptance by the city’ is necessary because, by that act, the dedication becomes irrevocable.” City of Cabot v. Brians, supra at 632 (citations omitted)(emphasis added)

The “irrevocable dedication” of public places shown on the plat occurs when any lot is sold and “once the dedication has occurred, the City may accept it at any time or when the necessity should arise.” Id. The Fayetteville Water and Sewer Department and the Fire Department say that time is now and the necessity to construct the water tower is now.

“(T)he City need not have formally accepted or confirmed the dedication of the parcel under the circumstances of this case or made immediate use of the parcel once acquired. The irrevocable dedication occurred when lots were sold by reference to the plat, and the City, at that point, could accept the dedication at any time. Such dedication and right to accept it invested the City with, at the very least, a ‘right to possession’ of the parcel, which under Ark. Code Ann. §22-1-204, would bar appellees’ adverse-possession claim.” Id.

C. Will the City Be Liable for Inverse Condemnation For Constructing a Water Tower on Lot 22?

Such a contention was presented by the Mintons in Minton v. Craighead, 304 Ark. 141, 800 S.W. 2d 707 (1990). In that case the owners claimed “their residential properties had been devalued because Craighead County had built a jail in their neighborhood.” Id. at 708. The Arkansas Supreme Court affirmed the dismissal of their claims as follows:

“It must often happen that the value of a city lot is diminished as a result of the condemnation of adjoining property for some distasteful purpose, such as the construction of a city jail. But as the court convincingly demonstrated in City of Geary v. Moore, 118 Okl. 616, 75 P.2d 891, this is an injury ‘for which the law does not, and never has, afforded any relief.’” Id. at 708, 709.

III. Conclusion

The POA's attorney, Connie Clark, has presented good arguments in her Memorandum pointing out all of the possible weaknesses in the City's position that it received Lot 22 as a dedication on the 1974 Final Plat of Hyland Park, Phase II, Block 5. I certainly admit the situation would be more clear if the Certificate of Ownership and Dedication had expressly mentioned Lot 22 or if the Plat had writing on Lot 22 such as: "City property, Water Tower site." The dedicator instead referred in his dedication to "other open spaces to public or private use as noted." He then noted in Note 3 that "Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become property of the City of Fayetteville."

Note 3 itself could have been more clearly worded, but "any doubt or ambiguity in the meaning of dedicatory plat is construed most strongly against the dedicator and to the reasonable advantage of the grantees of the dedicated use, *i.e.* so as to benefit the public rather than the donor." City of Cabot v. Brians, 93 Ark. App. 77, 216 S.W. 3d 627, 631 (2005).

I believe the City has a strong case supporting its position that Lot 22 has been dedicated to the City for use as a water tower site. Reasonable minds can differ in their interpretation of the facts and law so that litigation is always possible and in this case, very likely. Although I believe the City would probably prevail, it is not inconceivable that the POA would be successful.

The impact of placing such a tall water tower within this long established and beautiful neighborhood should not be ignored. All of us realize its impact on the closest neighbors would be very significant. Therefore, **I anticipate protracted litigation from the POA** (which includes several extremely competent attorneys) if no solution other than to build a water tower on Lot 22 can be found. The POA might be able to prevent construction during this litigation by Court injunctive relief. Even without such an injunction, the City Council would have to decide whether to proceed with construction and risk being forced to condemn the property (if the POA was successful) or to delay until the Court could rule.

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

6/9/2009

City Council Meeting Date
Agenda Items OnlyDavid Jurgens
Submitted ByWater & Wastewater
DivisionUtilities
Department**Action Required:**

Approval of a resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construction a water tower thereon.

\$ -
Cost of this request

\$ 2,189,147
Category / Project Budget

Mt Sequoyah Press Plane Imprvmt
Program Category / Project Name

5400.5700.5314.02
Account Number

\$ 139,888
Funds Used to Date

Water and Wastewater
Program / Project Category Name

04036-1
Project Number

\$ 2,049,259
Remaining Balance

Water/Sewer
Fund Name

Budgeted Item ☒ XXBudget Adjustment Attached ☐

[Signature]
Department Director

2 Jun 09
Date

Previous Ordinance or Resolution # 151-04

[Signature]
City Attorney

June 2, 2009
Date

Original Contract Date: 10/5/2004

Original Contract Number: 900

Paul A. Becker
Finance and Internal Services Director

June 2, 2009
Date

Received in City
Clerk's Office

ENTERED
6-2-09 LWS

Jim Mann
Chief of Staff

6-2-09
Date

Received in
Mayor's Office

6/2/09
ENTERED

Twyll Jordan
Mayor

6/3/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan
Fayetteville City Council

Thru: Don Marr

From: David Jurgens, Utilities Director
Fayetteville Sewer Committee



Date: June 2, 2009

Subject: Approval of a resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construction a water tower thereon

RECOMMENDATION

Staff recommends approval of a resolution to authorize the Fayetteville City Attorney to file a declaratory judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construction a water tower thereon.

BACKGROUND

Lot 22 of the Hyland Park Phase II subdivision was designated as the site for the water storage tank when the subdivision plat was filed in July 1974, with the following statement on the plat: "Lot 22 has been approved by the Planning Commission for construction of a water tower and is to become the property of the City of Fayetteville."

DISCUSSION

At a Sewer Committee meeting on August 15, 2008, the Committee reviewed all viable tank alternatives and directed staff to proceed with negotiations with the Hyland Park Homeowner's Association regarding a potential land swap for another suitable property near the site. After information was sent to the HOA in September, 2008, no response was received from the HOA. In response to a letter sent by the City on 15 April, 2009, the HOA stated their refusal to negotiate or support the City's actions in any way. Negotiations have recently resumed, but a firm decision is required in order to proceed with tank construction.

Additional detail is included in the enclosed fact sheet.

A full presentation of the issues will be made at the City Council meeting.

BUDGET IMPACT

There is currently \$2,049,259 in the impact fee fund and \$128,549 in the Water/Sewer fund budgeted for this project.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE FAYETTEVILLE CITY ATTORNEY TO FILE A DECLARATORY JUDGMENT ACTION OR OTHER APPROPRIATE REQUEST FOR JUDICIAL RELIEF CONCERNING THE OWNERSHIP OF LOT 22 OF HYLAND PARK PHASE II AND THE CITY'S RIGHT TO CONSTRUCT A WATER TOWER THEREON

WHEREAS, the City Council has determined that the City needs to construct a 500,000 gallon water storage tank on Lot 22 of Hyland Park Phase II; and

WHEREAS, the Hyland Park Homeowners Association has maintained "that the city does NOT own lot 22," (letter of May 1, 2009; attached as Exhibit A); and

WHEREAS, the Hyland Park Homeowners Association has asserted "that the City will have to prove its ownership of Lot 22 in a Court of competent jurisdiction and (4) such may well result in a substantial pecuniary loss to the city." (letter of May 1, 2009)

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville City Attorney to file a Declaratory Judgment action or other appropriate request for judicial relief concerning the ownership of Lot 22 of Hyland Park Phase II and the City's right to construct a water tower thereon.

PASSED and APPROVED this 9th day of June, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

From: Lioneld Jordan
To: Williams, Kit
Date: 5/4/2009 12:23 PM
Subject: Fwd:
Attachments: Hyland Park HOA.wpd; Hyland Park HOA.doc; Hyland Park HOA.pdf

FYI
Lana

>>> "Chip Wright" <chip_wright@cox.net> 5/1/2009 5:00 PM >>>

To the Mayor and All Council Members:

Attached in three separate formats (Word Perfect – wpd; Word – doc and Acrobat – pdf) is a letter setting forth the position of the Hyland Park Property Owners Association, Phase II, to the letter of April 15, 2009 from Mayor Jordan. In addition, a hard copy of the letter is being sent to the Mayor and those Council members choosing to list their addresses on the City of Fayetteville web site.

By copy of this email to all homeowners in the Association, I am likewise furnishing them with a copy of the already approved letter, also in the three formats noted above.

The President of our Association is Herschel Sandefur; the Secretary is Connie Clark; I am the Treasurer.

Any or each of you should feel free to contact any member of this Association to address any questions you might have concerning our position as the letter does, in fact, set forth the unanimous position of this Association.

Thanks,

Tilden P. "Chip" Wright III
Treasurer
Hyland Park Homeowners Association, Phase II
2405 Boston Mountain View
Fayetteville, AR 72701
Home: 479-521-3263
Cell: 479-841-7456
email: chip_wright@cox.net

E-mail message checked by Internet Security (6.0.0.386)

Database version: 5.12300

<http://www.pctools.com/internet-security/> (<http://www.pctools.com/en/internet-security/>)

HYLAND PARK HOMEOWNERS ASSOCIATION, PHASE II

Tilden P. Wright III, Treasurer

2405 Boston Mountain View

Fayetteville, AR 72701

May 1, 2009

B. 2

Hyland Park Phase II – Declaratory

Judgment Action

Page 5 of 12

Re: Reply to Water Tower Ultimatum

Mayor Lioneld Jordan
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Mayor Jordan:

Homeowners in Hyland Park Phase II, an addition to the City of Fayetteville, received copies of your letter of April 15, 2009. As you addressed your letter to me, instead of to our President, it has fallen upon me to respond.

At a regularly scheduled meeting of the Homeowners Association, held on the 20th of April, 2009, your letter was an agenda item. At the outset, let me congratulate you on alienating each and every homeowner in this association. Your letter and delivery of an ultimatum was offensive.

The members of our association have attended numerous meetings with the city, including the engineering office, as well as public forums. At every turn we have tried to inform city representatives that the city does NOT own lot 22. Although at one time offered to the City, a legal dedication, as required by Arkansas law, did not occur solely due to the failure of the governing body of the City to accept such a generous offer long before development and construction of this residential neighborhood. The City has never maintained Lot 22; has never participated in any of the costs incurred by this Association for its maintenance; has not paid any of the Association annual dues nor exercised any of the other normal indicia of a claim of ownership. The payment of property taxes, upon which you so heavily rely, only began when your ownership was first placed in question. Prior to learning of the Associations denial of your ownership, you expressed absolutely no interest in Lot 22. Lot 22 and the proposed water tower site sits in the front yard of one of our neighbors and is within 100 feet of their residence. Lot 22 together with the common area immediately across the street, is the point of entry to this established neighborhood and will be forever blemished by this construction. At a time of significant home devaluation nationwide, your proposed action further makes our property less valuable and certainly less marketable.

Although a task normally relegated to the city, our HOA has suggested several options. We have asked that the city consider the abandoned fire station property on Crossover or an "undeveloped" elevated site to use for water storage. We have asked them to consider underground storage on our common property with a "smart" pump or at least some combination that results in a smaller above ground storage unit. We are not alone in trying to help the city. A site has even been freely offered by the Stone Mountain Developer. These options appear reasonable, and should certainly merit discussion. But, from the very outset of this latest effort to take property from this Association, it became apparent the City did not want to consider alternatives. All of our arguments and requests have fallen on deaf ears. The decision had

the city remained on target to construct a 14 - story, one-half million gallon water tank at the entry to our neighborhood .

In an amazing show of arrogance and audacity, the city attorney even requested that this Association prove the city does not own lot 22; we were asked by then Mayor Coody to try to negotiate with another neighbor, not a part of our neighborhood association, to obtain a site for the city; we have been asked to find and purchase a suitable site and "donate" it to the city; and we have been asked to swap our common area land on which neighborhood amenities exist for an unclouded title to a lot we already own, lot 22.

We are unaware of the city ever placing such a huge piece of infrastructure in an individuals' yard in an established neighborhood. Orders from the department of health and the shrill cries about fire safety reveal that the city has likely failed to meet its water infrastructure needs for many years. It is wrong to punish homeowners by ruining a well established neighborhood to quickly cover for the administrations lack of planning, poor system maintenance, and failure to build water infrastructure in the new neighborhoods which are the root cause behind the need for the tower.

Here is our answer to your ultimatum:

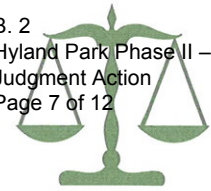
- a. We will not "swap" a piece of the common area property for an unclouded title to lot 22;
- b. We will not acquiesce in the claim of ownership, by the city, of Lot 22; and
- c. We will not acquiesce in the construction of a water tower anywhere within Hyland Park Phase II.

It is my belief that some, if not all, of the members of this Association will take whatever actions they deem necessary to protect their investments in their homes. I further believe that some outside of this Association will also suffer consequences from this action by the city and I would anticipate they would likewise take action to protect their homes. There is no doubt that the construction of this contemplated water tower at the chosen site will have a significant, negative impact on the values of every home located in its vicinity. Whether the city, its attorney, its governing body or others believe there is real monetary exposure under these circumstances is not the point. The point is (1) the exposure does exist; (2) it will be decided, not by the city and not by the Association, but rather by an independent legal body; (3) it is very likely that the city will have to prove its ownership of lot 22 in a Court of competent jurisdiction and (4) such may well result in a substantial pecuniary loss to the city.

We sincerely hope you reconsider this ill-fated decision.

Tilden P "Chip" Wright III
Treasurer
Hyland Park Phase II

cc: Fayetteville City Council Members, by regular mail and email
Homeowners, Hyland Park Homeowners Association, Phase II



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

CC: **David Jurgens**, Utilities Department Director

FROM: **Kit Williams**, City Attorney

A blue ink handwritten signature, likely of Kit Williams, written over a horizontal line.

DATE: **May 5, 2009**

RE: **Hyland Park Homeowners' Association letter of May 1, 2009**

The City of Fayetteville has long tried to work with the Hyland Park Homeowners' Association about the City's need to install a water tank at a usable level on that mountain. In late July of 2008, I issued a legal memo (copy attached) detailing how and why Lot 22 of Hyland Park Phase II came to be set off and dedicated to the City of Fayetteville "for construction of a water tower and is to become the property of the City of Fayetteville." (plat of Hyland Park, Phase II)

The POA pointed out potential weaknesses in the language of the plat and argued that the City does not own Lot 22. I quoted in my Conclusion from a 2005 Court of Appeals' case that: "any doubt or ambiguity in the meaning of the dedicatory plat is construed most strongly against the dedicator (developer) and to the reasonable advantage of the grantees of the dedication use, i.e. so as to benefit the public rather than the donor." City of Cabot v. Brians, 93 Ark. App. 77, 216 S.W. 2d 627, 631, (2005).

I stated then and continue to believe that "the City has a strong case supporting its position that Lot 22 has been dedicated to the City for use as a water tower site." I also noted that "Reasonable minds can differ in their interpretation of facts and law so the litigation is always possible and in this case, very likely."

Following another City Council Sewer Committee meeting on August 21, 2008, the Committee unanimously determined that an elevated water tank on Hyland Park's mountain was necessary and advisable. The aldermen hoped that

City staff could work with the Hyland Park Homeowners' Association to see if another feasible site for the water tank could be found at a proper elevation on the mountain. City staff did attempt such cooperation. Attached is a copy of my letter to Bill Clark of Hyland Park discussing two other possible locations for the water tower.

Unfortunately, no progress was made. Finally, (seven months after my letter identifying three possible options) on April 15, 2009, Mayor Jordan sent a letter (attached) to Chip Wright, Jim Waselues and Bill Clark who had all been very active in this matter. Although Mayor Jordan's letter was termed "an ultimatum (and) offensive," by Mr. Wright, it was polite, if necessarily clear, that the City could not wait any longer to accomplish the needed upgrade to our water capacity not only for homeowners' normal uses, but for fire protection. I urge you to read Mayor Jordan's letter yourself.

All of the "options" suggested by Mr. Wright in his letter have been examined by City engineers and independent engineers and rejected as not feasible or much more expensive, unfair to other neighborhoods and not the most effective solution to the water capacity needs (especially for fire protection). Most, if not all of these other options were rejected unanimously by the Aldermen Sewer Committee in August of 2008.

WHAT TO DO NOW?

Unless the City Council wishes to reverse the unanimous decision of the Aldermen Sewer Committee, City Staff will need to begin the design of the water tank on the Hyland Park Mountain. Currently the only land owned or dedicated to the City of Fayetteville that will be feasible for such water tower appears to be Lot 22 of Hyland Park, Phase II.

Such an elevated water tank will be expensive to engineer and will need to be engineered for a specific site and elevation. I noted in my conclusion to my July 29, 2008 memo: "Although I believe the City would probably prevail, it is not inconceivable that the POA would be successful." Therefore, in order to give our citizens even more assurance that the tax revenues will not be endangered, we may need to proceed with a Declaratory Judgment suit so a Court can analyze the facts, plat, and law to determine whether our dedication rights prevail over any claims by the POA.

I filed a Declaratory Judgment Action in the TIF bonds case and was glad I did when the Supreme Court ruled the originally approved distribution of property tax increments had to be changed in order to be constitutional. That Declaratory Judgment suit prevented a later illegal exaction suit which would have been successful and would probably have cost our city's and our schools' taxpayers potentially hundreds of thousands of dollars in attorney's fees. Not as much money is probably at stake here, but I still feel it would be worth the expense and effort of litigation to get a judicial decision about Lot 22.

I believe that City staff will present a Resolution for your consideration in the near future to allow full discussion before the entire City Council so that you can determine whether or not you wish to authorize the construction of a water tank on Lot 22. A second section of this Resolution will probably allow you to determine whether or not you wish me to file a Declaratory Judgment action prior to construction to resolve the issue of the dedication of Lot 22 to the City for use as a water tower site.



April 15, 2009

Mr. Chip Wright
Hyland Park II Homeowners' Association
2405 East Boston Mountain View
Fayetteville, AR 72701

Dear Mr. Wright,

At the Water and Sewer Committee meeting August 21, 2008, representatives of the Hyland Park II Homeowners' Association stated they would attempt to identify land that met the stated placement requirements of the water tank site in the vicinity of alternative 4, northwest of the intersection of Canterbury Road and Boston Mountain View. The stated intent was for the land to be swapped, at no expense to the City, for lot 22, designated on the subdivision plat as the water tank site.

Fayetteville must proceed with the construction of this much needed water storage tank, but has not yet received information that a piece of land has been designated and a potential exchange arrangement has been initiated. Adequate time has passed for any arrangements to be made. If the City does not receive information whereby we can review the suitability of an adequate area at the alternative 4 site west of Canterbury Road prior to May 15, 2009, then we shall begin final design, followed by tank construction, for lot 22.

Thank you for your time. Please do not hesitate to contact me at 479-575-8330 if you have any questions.

Sincerely,

City of Fayetteville

A handwritten signature in black ink, appearing to read "Lioneld Jordan", is written over the typed name.

Mayor Lioneld Jordan

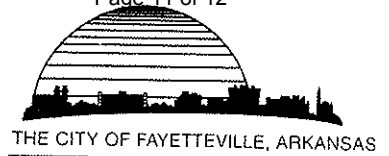
cc: Jim Waselues, 1018 North Canterbury Road
Bill Clark, 823 North Canterbury Road

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

DAVID J. WHITAKER
Assistant City Attorney
Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315

B. 2
Hyland Park Phase II – Declaratory
Judgment Action
Page 11 of 12



113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

September 15, 2008

Honorable Bill Clark
111 Holcomb
Springdale, AR 72764

RE: Water Tower site

Dear Bill:

The Water and Wastewater Department has studied three potential sites on your mountain and the minimum area needed for each site. Enclosed are area maps of each site:

- (1) Lot 22 (basically the whole lot with any left over being buffer);
- (2) Lot 23 with a portion of the strip of land which is probably still owned by Lindsey. This would not use all of Lot 23 as the pool and clubhouse would be unaffected;
- (3) A portion of lot 7 of John Smyth Addition (Gary Combs' lot with a portion of the Lindsey undeveloped and undedicated jeep trail. This must be larger because we anticipate the need to build a retaining wall and do more grading on this steeper slope.

I also enclosed two larger versions of 2 and 3 for your use in a neighborhood meeting.

The City's engineers looked for cases where water towers had collapsed in the United States and could find no examples in recent years. (They found no examples at all, but only went back a few years.) I believe the Mayor has committed to including your neighborhood input about the design of the water tower. Please let me know if you need further information.

With kindest regards,

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

KIT WILLIAMS

Fayetteville City Attorney

KW/jh

Enclosures

Cc: Mayor Coody

Revised Resolution on Tentative Agenda

RESOLUTION NO. _____

A RESOLUTION TO APPROVE TASK ORDER NO. 1 FOR ENGINEERING SERVICES BY McCLELLAND CONSULTING ENGINEERS FOR RUNWAY 16 SAFETY IMPROVEMENTS IN THE AMOUNT OF \$231,100.00 AND TO APPROVE A BUDGET ADJUSTMENT OF \$231,096.00

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves Task Order No. 1 for engineering services by McClelland Consulting Engineers for Runway 16 safety improvements in the amount of \$231,100.00 and approves a budget adjustment in the amount of \$231,096.00.

PASSED and APPROVED this 19th day of May, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

TASK ORDER NO. 1
CONSTRUCTION PHASE SERVICES
For
DRAKE FIELD RUNWAY16 SAFETY AREA IMPROVEMENTS

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on May 5, 2009. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Municipal Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville and McClelland Consulting Engineers (MCE) sets forth the project description, project schedule, and engineering fees for construction phase services related to the Runway 16 Safety Area Improvements, Drake Field.

SECTION I - PROJECT DESCRIPTION

The project is to consist of the relocation of Highway 71 and Lancaster Drive and the regarding of the Runway 16 Safety Area. The services to be performed include: Construction Admin; Observation Services; Construction Materials Testing; and review fees for State or Federal Agencies.

SECTION II - PROJECT SCHEDULE

From the time the City of Fayetteville issues the Notice To Proceed (NTP), McClelland Consulting Engineers, Inc. will endeavor to execute the project within the following time periods:

<u>Task</u>	<u>Completion After NTP</u>
A. Work Schedules I & II	180 calendar days
B. Work Schedules III & IV	180 calendar days

SECTION III - SCOPE OF SERVICES

McClelland Consulting Engineers, Inc. shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, the project is likely to include:

- A. Construction Administration.
- B. Construction Observation and
- C. Prepare "Record Drawings" at the completion of construction based upon the Contractor's mark-ups.
- D. Construction staking of a baseline.
- E. Construction Materials Testing.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to McClelland Consulting Engineers, Inc. as compensation for his services:

- A. Construction Administration: Hourly rates, estimated to be \$ 31,060.
- B. Construction Observation Hourly rates, estimated to be \$ 155,100.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly
executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

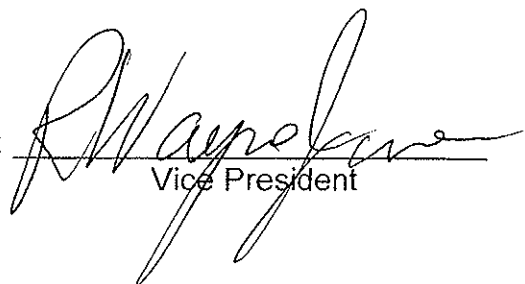
By: _____
Mayor

Attest: _____

Date: _____

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: _____
President

Attest: _____
Vice President

Date: 5-1-09

City of Fayetteville Staff Review Form

C. 1
Procter & Gamble
Page 1 of 8Added at
Agenda Session
6-9-09
NB#1City Council Agenda Items
and
Contracts, Leases or Agreements

6/16/2009

City Council Meeting Date
Agenda Items Only

Connie Edmonston/Alison Jumper

Submitted By

Division

Parks & Recreation

Department

Action Required:

Approval of a resolution accepting \$30,000 donation from Procter and Gamble for a dog park in Bryce Davis Park and to approve a budget adjustment recognizing the increase in revenues.

n/a

Cost of this request

\$

-

Category / Project Budget

Parks Development Donations

Program Category / Project Name

\$

-

Account Number

Funds Used to Date

Neighborhood Park Development

Program / Project Category Name

"02013.0902

Project Number

\$

-

Remaining Balance

Parks Development

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒Connie Edmonston
Department Director6-8-09
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

6/8/09
DateMarsha Hextweck
Finance and Internal Services Director6/9/09
DateReceived in City
Clerk's Office

Chief of Staff

6/8/09
DateReceived in
Mayor's Office

Mayor

6/8/09
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council
Thru: Don Marr, Chief of Staff
Connie Edmonston, Director of Parks and Recreation *CE*
From: Alison Jumper, Park Planner *WJ*
Date: June 4, 2009
Subject: **To accept a Donation from Procter and Gamble for a Dog Park**

RECOMMENDATION

Approval of a resolution accepting a \$30,000 donation from Procter and Gamble for a dog park in Bryce Davis Park and to approve a budget adjustment recognizing the increase in revenues.

BACKGROUND

The citizens of Fayetteville have expressed interest in the past in developing an off leash dog park. Parks and Recreation Staff held multiple public meetings starting in 2006 to solicit input for location and proposed amenities. An additional 17 acres were added to the west side of Bryce Davis Park in 2008 from the Links development park land dedication requirement. This park will serve as a 26 acre community park for the northwest quadrant of the city, similar to Gulley and Wilson parks.

The additional land lends itself to the development of a dog park. Park Staff hosted a general public meeting and attended a Ward 4 meeting to discuss the park expansion and a dog park was suggested at both meetings.

DISCUSSION

Park Staff has discussed the possibility of a dog park with Procter and Gamble and subsequently they would like to donate funding in the amount of \$30,000 at this time towards the development of the dog park. The master plan for Bryce Davis Park is anticipated to be presented to Parks and Recreation Advisory Board in July for approval. Procter and Gamble must process the donation by the end of their fiscal year which is June 30, 2009. Construction of the dog park will be first priority in the development of the park to complete it by June 30th as written in the attached contract. Procter and Gamble reserves the right to name the park pending approval by Parks and Recreation Advisory Board.

BUDGET IMPACT

The dog park has been incorporated into the overall master plan of the Bryce Davis Park expansion. The park budget is \$395,000, from the Northwest Park Land Dedication Fund.

Attachment:

Letter from Procter and Gamble
Bryce Davis Park Conceptual Master Plan

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A DONATION FROM PROCTER & GAMBLE IN THE AMOUNT OF \$30,000.00 TO FUND A PORTION OF THE DEVELOPMENT COSTS FOR A DOG PARK AT BRYCE DAVID PARK; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE REVENUE.

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 accepts a donation from Procter & Gamble in the amount of \$30,000.00 to fund a portion of the development costs for a dog park at Bryce David Park.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the revenue.

PASSED and APPROVED this 16th day of June, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

C. 1
Procter & Gamble
Page 4 of 8

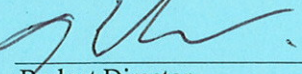
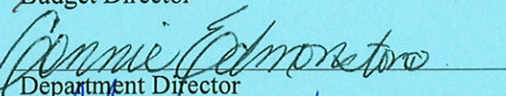
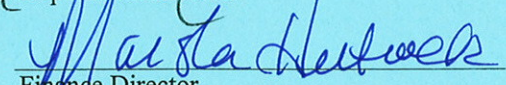
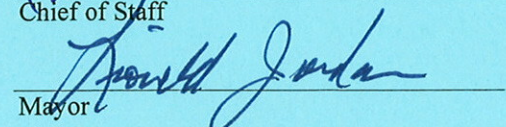
Budget Year 2009	Department: Operations Division: Parks & Recreation Program: Parks Development Capital	Date Requested 6/16/2009	Adjustment Number
--------------------------------	--	--	-------------------

Project or Item Added/Increased: To recognize \$30,000 in donation revenue received in 2009 for development of a dog park at Bryce Davis Park.	Project or Item Deleted/Reduced: Approve of budget adjustment in the amount of \$30,000 to recognize donation from IAMS.
--	--

Justification of this Increase: A donation of \$30,000 has been contributed to assist in the development of a dog park at Bryce Davis Park.	Justification of this Decrease: There is adequate funds in this account.
---	--

Increase Budget							
Account Name	Account Number				Amount	Project Number	
Park Improvements	2250	9255	5806	00	30,000	02013	0902

Decrease Budget							
Account Name	Account Number				Amount	Project Number	
Donations	2250	0925	4809	00	30,000	02013	0902

 Division Head 6-5-09 Date  Budget Director 6-8-09 Date  Department Director 6-5-09 Date  Finance Director 6/9/09 Date  Chief of Staff 6-8-09 Date  Mayor 6/16/09 Date	V.090403 Budget & Research Use Only Type: A B C <u>D</u> E Requested By _____ General Ledger Date _____ Posted to General Ledger Posted to Project Accounting <table border="0"> <tr> <td>Initial _____</td> <td>Date _____</td> </tr> <tr> <td>Initial _____</td> <td>Date _____</td> </tr> </table>	Initial _____	Date _____	Initial _____	Date _____
Initial _____	Date _____				
Initial _____	Date _____				

Project Request Form

Request for Additional Subprojects

Project Number : 02013
Project Title : Neighborhood Parks Development

Sub Project Request:

Sub Project Number : 0902
Sub Project Title : Bryce Davis IAMS Dog Park
Sub Project Status : Pending
Sub Project Manager : Connie Edmonston
Grant (Y/N) : no

GL Accounts Assigned: 2250.9255.5806.00 Park Improvements

X

Sub Project Request:

Sub Project Number :
Sub Project Title :
Sub Project Status :
Sub Project Manager :
Grant (Y/N) :

GL Accounts Assigned:

Sub Project Request:

Sub Project Number :
Sub Project Title :
Sub Project Status :
Sub Project Manager :
Grant (Y/N) :

GL Accounts Assigned:

Is this item going to Council? yes
If yes, please specify date: 6/16/09

Is a budget adjustment needed? yes

[Signature]
Requested By

Entered By



Tim Marrin
Associate Director, External Relations

The Procter & Gamble Distributing Co.
1303 E. Joyce Boulevard
Fayetteville, AR 72703

tel (479) 571-5533
marrin.tp@pg.com
www.pg.com

June 8, 2009, 2009

Allison Jumper
Connie Edmonston,

Procter & Gamble is pleased to support the City of Fayetteville's creation of a dog park within the Bryce Davis Park through a donation of \$30,000 to be directed to the project. We understand we will have naming rights to the dog park. We also look forward to working with the City in the design of the signs, the park itself, and the ground breaking and opening of the park.

Since coming to Fayetteville over 20 years ago, Fayetteville has been a great partner to Procter & Gamble. One of our stated objectives is to *Make This a Great Place to Live and Work...* the creation of this dog park is another way Fayetteville continues to improve the quality of life!

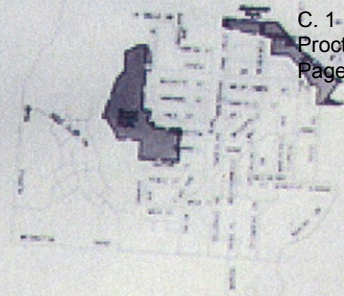
We look forward to our continued partnership.

Sincerely,

Tim Marrin

cc: Kerry Holloway
Neelam Modi

Touching lives, improving life. **P&G**™



REGIONAL MAP



BRUCE DAVIS PARK
CONCEPTUAL MASTER PLAN

City of Fayetteville Staff Review Form

C. 5
Quitclaim Deed for 20th Street
and Access Land
Page 1 of 10

City Council Agenda Items
and
Contracts, Leases or Agreements

6/16/2009

City Council Meeting Date
Agenda Items Only

Jesse Fulcher
Submitted By

Planning
Division

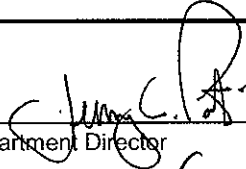
Development Services
Department

Action Required:

Approval of a resolution to quitclaim approximately 0.02 and 1.99 acres of land owned by the City of Fayetteville, related to the vacation of 20th Street right-of-way and Resolution 166-01, to the University of Arkansas.

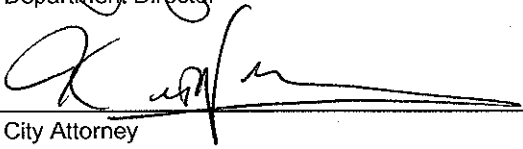
_____	\$ _____	_____
Cost of this request	Category / Project Budget	Program Category / Project Name
_____	\$ _____	_____
Account Number	Funds Used to Date	Program / Project Category Name
_____	\$ _____	_____
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐Budget Adjustment Attached ☐


Department Director

06-08-09
Date

Previous Ordinance or Resolution # _____


City Attorney

6-8-09
Date

Original Contract Date: _____

Original Contract Number: _____


Finance and Internal Services Director

6/9/09
Date

Received in City
Clerk's Office




Chief of Staff

6/10/09
Date

Received in
Mayor's Office




Mayor

6/10/09
Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

To: Fayetteville City Council
From: Jesse Fulcher, Current Planner
Date: June 5, 2009
Subject: Vacation for U of A/20th Street (VAC 09-3282)

Through a contract approved by the City Council in 2001, the City of Fayetteville deeded the land containing the right-of-way for 20th Street and two surrounding parcels to the University of Arkansas. Although this land was sold to the U of A, the City of Fayetteville City Council never officially vacated the right-of-way for 20th Street. Additionally, a 0.02 acre property on the north side of the 20th Street right-of-way was retained by the City of Fayetteville, since it provided the only point of access to a tract not then owned by the University. The intent of the subject vacation and associated resolution is to officially vacate the entire right-of-way for 20th Street, which is now within the state owned right-of-way for Research Technology Boulevard, and quitclaim deed this property to the University of Arkansas. An additional quitclaim deed has been prepared for the 0.02 acre property on the north side of the 20th Street right-of-way to transfer ownership from the City to the University. All land surrounding this remnant property are now owned by the University and therefore the access preserved through this property is no longer needed.

0.02 acres retained for access

20th Street ROW

PRIVATE 659

S INNOVATION WAY

W CATO SPRINGS RD

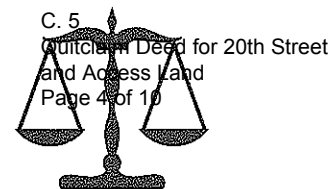
S SCHOOL AVE

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

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

FROM: **Kit Williams, City Attorney**

DATE: **June 8, 2009**

RE: **Quitclaim Deeds for 20th Street and access land**

The University of Arkansas paid the City of Fayetteville for the land within its Research Technology Center grounds in 2001. Because there was still some privately owned property within the grounds, the City did not vacate 20th Street nor an access to this private parcel. The University is now the owner of this last parcel of private land and has asked us to vacate 20th Street (which is or will become Research Technology Boulevard) and the .02 acre access parcel.

Since we have already received fair compensation for our property, it is legal to convey these remainder pieces to the University of Arkansas

RESOLUTION NO. 166-01

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS FOR THE SALE OF LAND LOCATED ON SOUTH SCHOOL STREET IN THE AMOUNT OF FOUR HUNDRED FIFTY-NINE THOUSAND DOLLARS (\$459,000.00) LESS ASSOCIATED CLOSING COSTS.

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

Section 1. That the City Council hereby approves an Offer and Acceptance contract between the City of Fayetteville and the Board of Trustees of the University of Arkansas for the sale of land located on South School Street in the amount of Four Hundred Fifty-Nine Thousand Dollars (\$459,000.00) less associated closing costs. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

Section 2. That the City Council authorizes the Mayor to sign said agreement with the Board of Trustees of the University of Arkansas.

PASSED AND APPROVED this 4th day of December, 2001.

APPROVED:

By: 
DAN COODY, Mayor




HEATHER WOODRUFF, City Clerk



RESOLUTION NO. _____

**A RESOLUTION TO APPROVE TWO QUITCLAIM DEEDS
TO THE UNIVERSITY OF ARKANSAS TO CONVEY THE
VACATED 20TH STREET AND A SECOND SMALL AREA
WHICH HAD BEEN RETAINED FOR ACCESS**

WHEREAS, 20th Street has been vacated and is or will be state owned right-of-way for Research Technology Boulevard; and

WHEREAS, the University of Arkansas has requested that the City convey by quitclaim deed this two acre parcel to the University to eliminate any ownership issues; and

WHEREAS, the University of Arkansas has already purchased and paid for all of the City of Fayetteville property within this Research and Technology Park through Resolution No. 166-01, but a small .02 acre sliver was retained by the City of Fayetteville to provide access to what was then a privately owned parcel that has now been purchased by the University of Arkansas.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas approves both of the attached quitclaim deeds conveying about two acres of vacated 20th Street and .02 acre of access property to the University of Arkansas and authorizes Mayor Jordan to sign these deeds.

PASSED and APPROVED this 16th day of June, 2009.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

QUITCLAIM DEED

BE IT KNOWN BY THESE PRESENTS:

THAT the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTORS, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, sell and quitclaim unto the **Board of Trustees of the University of Arkansas, Fayetteville**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, all of our right, title and interest, in and to the following described land situated in the County of Washington, State of Arkansas, to-wit:

Part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Twenty-one (21), Township Sixteen (16) North, Range Thirty (30) West, being more particularly described as follows: Commencing at the Northwest corner of said 40 acre tract; thence North 89 degrees 39 minutes 23 seconds East along the North line of said 40 acre tract 633.00 feet (deed = 565 feet, more or less) to the West right-of-way of U.S. Highway 471; thence South 08 degrees 38 minutes 43 seconds West along the West right-of-way of said Highway 632.93 feet (deed = 618.50 feet) to a set iron; thence North 89 degrees 39 minutes 23 seconds West 395.00 feet to a set iron for the true point of beginning; thence South 00 degrees 20 minutes 48 seconds West 102.08 feet to a set iron on the North right-of-way of Twentieth Street; thence North 89 degrees 35 minutes 42 seconds West 13.09 feet along the North right-of-way of said Street to an existing fence line; thence North 07 degrees 39 minutes 24 seconds East 102.90 feet to the point of beginning, containing 0.02 acres, more or less. (Deed Ref. 97-68335)

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever.

WITNESS the execution hereof on this _____ day of _____, 2009.

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: _____
Lioneld Jordan, Mayor

ATTEST:

Sondra Smith, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Lioneld Jordan** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2009.

MY COMMISSION EXPIRES:

Notary Public

QUITCLAIM DEED

BE IT KNOWN BY THESE PRESENTS:

THAT the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTORS, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, sell and quitclaim unto the **Board of Trustees of the University of Arkansas, Fayetteville**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, all of our right, title and interest, in and to the following described land situated in the County of Washington, State of Arkansas, to-wit:

A part of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty One (21) in Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, more particularly described as follows, to-wit: Beginning at a point which is North 87° 20' 57" West 18.16 feet and North 07° 39' 03" East 488.81 feet from the Southeast corner of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ in Section 21; thence running North 07° 39' 03" East 100.38 feet; thence North 87° 20' 57" West 339.87 feet; thence South 02° 39' 03" West 100.00 feet; thence South 87° 20' 57" East 331.12 feet to the Point of Beginning and containing 0.77 acre, more or less. The bearings for this description are based on the State Place Coordinate System which may vary from the bearing system previously used in described all or parts of the subject property. (Deed Ref. 97-30936) LESS AND EXCEPT any and all that portion already conveyed in Deed Ref. 2002-12816.

ALSO,

A part of the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) and a part of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-one (21), Township Sixteen (16) North, Range Thirty (30) West, described as: Beginning at a point nine hundred sixty-six (966) feet East and five hundred forty-seven (547) feet North of the Southwest corner of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$), of Section Twenty-one (21), Township Sixteen (16) North, Range Thirty (30) West; thence North forty (40) feet; thence East nine hundred sixteen and four-tenths (916.4) feet, more or less, to the center line of U.S. Highway No. 71; thence in a Southwesterly direction along the centerline of said highway forty (40) feet; thence nine hundred sixteen and four tenths (916.4) feet more or less to the point of beginning. (Deed Book 419 at Page 390) LESS AND EXCEPT that portion contained within the U.S. Highway 71 right-of-way.

TO HAVE AND TO HOLD the said lands and appurtenances thereunto belonging unto the said Grantee and Grantee's successors and assigns, forever.

WITNESS the execution hereof on this _____ day of _____, 2009.

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: _____
Lioneld Jordan, Mayor

ATTEST:

Sondra Smith, City Clerk

[SEAL]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF WASHINGTON) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Lioneld Jordan** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2009.

Notary Public

MY COMMISSION EXPIRES:

ALDERMAN AGENDA REQUEST FORM

C. 9
Willoughby Road Rezoning
Page 1 of 8

Added at
Agenda Session
6-9-09
NB#9

FOR: COUNCIL MEETING OF June 16, 2009

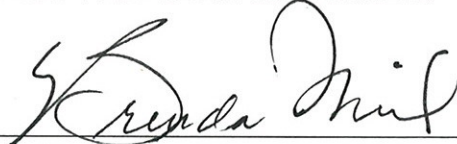
FROM: Brenda Thiel

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

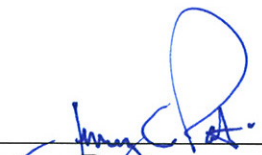
Rezoning for Mulch Disposal Site - Willoughby Road

An ordinance to rezone the property previously identified for a mulch disposal site associated with the 2009 Ice Storm Debris Clean-up from I-2, General Industrial to R-A, Residential Agricultural.

APPROVED FOR AGENDA:


Council Member **Brenda Thiel**

6/9/09
Date


Jeremy Pate
Director of Development Services

06.09.2009
Date



THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

To: Mayor Jordan, City Council
From: Jeremy Pate, Director of Development Services 
Date: 09 June 2009
Subject: Rezoning – Mulch Disposal Site

Staff has recently been informed that the mulch removal associated with the 2009 Ice Storm Debris Clean-up is rapidly coming to a close. In April of this year, the City Council approved a contract with International Equipment Distributors (IED) to dispose of the mulch. The site selected for the clean-up, as a transfer site, was also rezoned from R-A, Residential Agricultural to I-2, General Industrial with an associated Bill of Assurance limiting the use of the property to the mulch disposal activities. The site ultimately was not utilized for the intended purposes. In accordance with intent of the Council with the original rezoning and the Bill of Assurance offered by the property owner, staff has prepared an ordinance to rezone the property to its original R-A district. This proposal is sponsored by Council Member Brenda Thiel.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY IDENTIFIED AS PARCELS 765-15560-000 AND 765-15560-001, FOR APPROXIMATELY 15.2 ACRES, LOCATED SOUTH OF WILLOUGHBY ROAD AND 0.8 MILES EAST OF HWY 71B FROM I-2, GENERAL INDUSTRIAL TO R-A, RESIDENTIAL AGRICULTURAL.

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 I-2, General Industrial to R-A, Residential Agricultural as shown on Exhibit "A" attached hereto and made a part hereof.

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

PASSED and **APPROVED** this day of , 2009.

APPROVED:

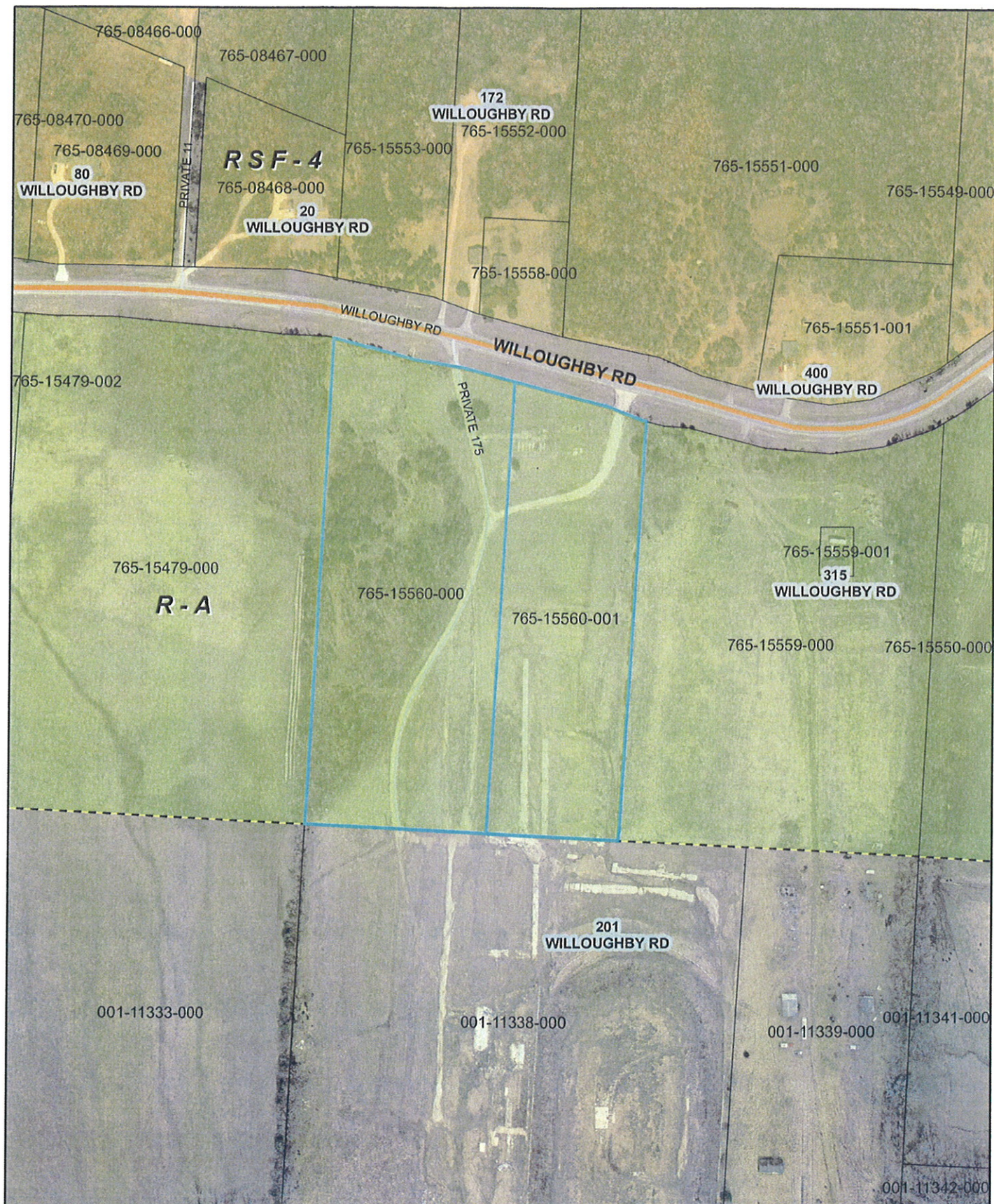
ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

REZONING - MULCH DISPOSAL SITE

"Exhibit A"





THE CITY OF FAYETTEVILLE, ARKANSAS

*Added at the
City Council Meeting
4-21-09*

*ORD
4121109
5236
Rezone
mulch Disposal
Site*

PLANNING DIVISION CORRESPONDENCE

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

To: Mayor Jordan, City Council
From: Jeremy Pate, Director of Development Services
Date: 21 April 2009
Subject: Rezoning – Mulch Disposal Site

In a Special City Council meeting on 16 April 2009, the City Council approved Resolution 83-09, awarding a contract with International Equipment Distributors (IED) to dispose of the mulch remaining from the 2009 Ice Storm Debris Clean-up. In the bids submitted, contractors selected sites which would meet the needs of the operation for removal, re-mulching and shipping of the mulch to end users. The site to be utilized by the contractor selected by the City is approximately 0.8 miles east of Hwy 71B, south of Willoughby Road. The property is zoned R-A, Residential Agricultural, and is currently not being utilized.

The zoning required for this use is I-2, General Industrial. As discussed at the Special City Council meeting, it is necessary to rezone this site from R-A to I-2 in order to authorize the intended use; a mulch disposal operation site. It is the understanding of staff that the rezoning of the property is solely requested to fulfill the terms of the contract for the mulch disposal operation related to the ice storm debris clean-up and as such, staff will recommend the property to be rezoned back to the original R-A, Residential Agricultural immediately upon the completion of the operation, as determined by the City of Fayetteville.

In accordance with the discussion of the City Council and staff at the Special City Council meeting, attached is an ordinance and exhibit for your consideration.

ORDINANCE NO. 5236

AN ORDINANCE REZONING THAT PROPERTY IDENTIFIED AS PARCELS 765-15560-000 AND 765-15560-001, FOR APPROXIMATELY 15.2 ACRES, LOCATED SOUTH OF WILLOUGHBY ROAD AND 0.8 MILES EAST OF HWY 71B FROM R-A, RESIDENTIAL AGRICULTURAL TO I-2, GENERAL INDUSTRIAL.

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

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

From R-A, Residential Agricultural to I-2, General Industrial as shown on Exhibit "A" attached hereto and made a part hereof.

Section 2: That the rezoning of the subject property is subject to the Bill of Assurance offered by the applicant as shown in Exhibit "B" attached hereto and made a part hereof.

Section 3: 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 21st day of April, 2009.

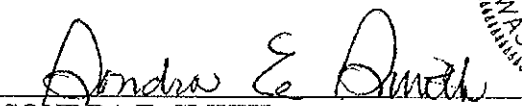
APPROVED:

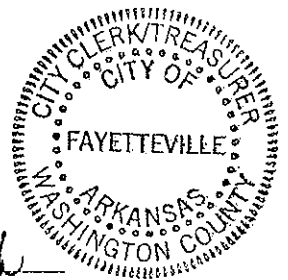
By:


LIONELD JORDAN, Mayor

ATTEST:

By:


SONDRA E. SMITH, City Clerk/Treasurer



**BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS**

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") SAM MATHEAS, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonable rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to the mulch disposal operation (2009 Ice Storm Debris Clean-up) as described and adopted by the City Council in Resolution 83-09 on 16 April 2009.
2. The Petitioner agrees that the zoning of the property is solely requested to fulfill the terms of the contract for the mulch disposal operation related to the ice storm debris clean-up and as such, will request the property to be rezoned back to the original R-A, Residential Agricultural immediately upon the completion of the operation, as determined by the City of Fayetteville.
3. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, _____, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

4-21-09
Date

SAM MATHEAS
Printed Name

P.O. Box 6485
Address
Springdale, Ark.

Sam Mathias
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON } .ss

And now on this the 21st day of April, 2009, appeared before me, Sam Mathias, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Becky Crumley
NOTARY PUBLIC

My Commission Expires:

June 1, 2016

