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
October 6, 2009

A meeting of the Fayetteville City Council will be held on October 6, 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. Methamphetamine Awareness Month Proclamation

Presentations, Reports and Discussion Items:

1. **Newspaper Publishing Discussion:** Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

A. Consent:

1. Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes. **APPROVED**

2. **Bid # 09-54 Frost Oil Company:** A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 204-09

3. **Bid # 09-55 Electronic Video Systems:** A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 205-09

4. **Bid # 09-57 Danny Robinson Construction, LLC:** A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 206-09

5. **Bid # 09-58 Chevy of Fayetteville:** A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 207-09

6. **Bid # 09-59 Chevy of Fayetteville:** A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 208-09

7. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 209-09

8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 210-09

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 211-09

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

    PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 212-09

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

    REMOVED FROM CONSENT AGENDA AND TABLED TO OCTOBER 20, 2009 CITY COUNCIL MEETING

Agenda Additions:

B. Unfinished Business:

1. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   THIS ORDINACE WAS LEFT ON THE SECOND READING.

2. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   THIS ORDINACE WAS LEFT ON THE SECOND READING.

C. New Business:

1. **2009 Sales and Use Tax Bond Ordinance:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5277

2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

   THIS ORDINACE WAS LEFT ON THE SECOND READING.

3. **Amend Chapter 50:** An ordinance waiving the automatic annual price increase for residential trash service for Fiscal Year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5278

4. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

   THIS ORDINACE WAS LEFT ON THE FIRST READING.

5. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

   PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 213-09

Announcements:

1. **City Council Tour: October 5, 2009 - Arkansas Research and Technology Park**

Adjournment: 7:10 p.m.

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Pre-Agenda Session 9-23-09

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

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Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 6, 2009

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Call to Order

Roll Call

Pledge of Allegiance

Agenda Session Presentations: Sales Tax Report & General Fund Budget Discussion ~~Sales Tax Update~~

1. General Fund Budget Discussion – Paul Becker

2. Telecommunications Board presentation to the City Council concerning cable franchise recommendations.

Mayor's Announcements, Proclamations and Recognitions:

1. Methamphetamine Awareness Month Proclamation Tentative

Presentations, Reports and Discussion Items:

1. **Newspaper Publishing Discussion:** Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

A. Consent:

1. Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

2. **Bid # 09-54 Frost Oil Company:** A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

3. **Bid # 09-55 Electronic Video Systems:** A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

4. **Bid # 09-57 Danny Robinson Construction, LLC:** A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

5. **Bid # 09-58 Chevy of Fayetteville:** A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

6. **Bid # 09-59 Chevy of Fayetteville:** A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

7. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Agenda Additions-

B. Unfinished Business:

Add kit memo

1. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

2. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

C. New Business:

1. **2009 Sales and Use Tax Bond Ordinance:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

NB #12

2. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

3. **Amend Chapter 50:** An ordinance waiving the automatic annual price increase for residential trash service for fiscal year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

#22

4. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mills for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

5. ~~**Amend Chapter 51:**~~ move to next agenda Don has this packet.

6. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

~~**Agenda Additions:**~~ move to after consent

Announcements:

1. **City Council Tour: October 5, 2009**

Adjournment:

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City Council Meeting: **October 6, 2009** **Adjourn:** 7:10 pm.

Subject:	**Roll**				
Alderman Rhoads arrived at 6:25 pm.	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan	✓			

Subject:	**Newspaper Publishing Discussion**				
Motion To:					
Motion By:		Continue on as is.			
Seconded:					
No vote Just continue as is.	**Thiel**				
	Cook				
	Petty				
	Rhoads				
	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Mayor Jordan				

City Council Meeting: **October 6, 2009**

Subject:	Nominating Committee Report				
Motion To:		Approve			Housing Authority Board Appointment.
Motion By:		Cook			
Seconded:		Gray			
	Thiel	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	absent during the vote.			
Approved	**Ferrell**	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

7-0

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

City Council Meeting: **October 6, 2009**

Subject:	**Consent**				
Motion To:		Approve			
Motion By:		Cook			
Seconded:		Petty			
204-09 thru 212-09	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	Absent during the vote			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

7-0

Amend Police Department's Policies, Prodedures & Rules

Subject:	#11 Consent Pull from Consent & Table to the next City Council Meeting.				
Motion To:		Remove from Consent & Table			
Motion By:		Petty			
Seconded:		Ferrell			
Removed from Consent & Tabled to Oct. 20 City Council meeting	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	Absent during the vote.			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

7-0

City Council Meeting: **October 6, 2009**

Subject:	**Rock Quarries Facilities**				
Motion To:		Table to the Oct 20, 2009 Meeting			
Motion By:		Petty			
Seconded:		Ferrell			
B. 1 Unfinished Business Left on the Second Reading & tabled to Oct. 20, 2009	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	absent during the vote.			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

7-0

Subject:	**Red Dirt Mining Facilities**				
Motion To:		Table to the Oct. 20, 2009 meeting			
Motion By:		Petty			
Seconded:		Ferrell			
B. 2 Unfinished Business Left on the Second Reading & tabled to Oct. 20, 2009	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	absent during the meeting			
	Ferrell	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				

7-0

City Council Meeting: **October 6, 2009**

Subject:	**2009 Sales and Use Tax Bond Ordinance**				
Motion To:		2nd Reading	3rd Reading	Pass	
Motion By:		Cook	Ferrell		
Seconded:		Ferrell	Cook		
C. 1 New Business	**Thiel**	✓	✓	✓	
	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
Passed	**Ferrell**	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
5277	**Mayor Jordan**				
		8-0	8-0	8-0	

Subject:	**2009 Millage Levy**				
Motion To:		2nd Reading			
Motion By:		Petty			
Seconded:		Thiel			
C. 2 New Business	**Thiel**	✓			
	Cook	✓			
	Petty	✓			
	Rhoads	✓			
Left on the Second Reading	**Ferrell**	✓			
	Lucas	✓			
	Lewis	✓			
	Gray	✓			
	Mayor Jordan				
		8-0			

City Council Meeting: October 6, 2009

Subject:	Amend Chapter 50				
Motion To:		2nd Reading	3rd Reading	Pass	
Motion By:		Ferrell	Cook		
Seconded:		Cook	Ferrell		
C. 3 New Business	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Petty	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
5278	Mayor Jordan				
		8-0	8-0	8-0	

Subject:	Old Wire Annexation Appeal				
Motion To:					
Motion By:					
Seconded:					
C. 4 New Business	Thiel				
	Cook				
	Petty				
	Rhoads				
Left on the First Reading	Ferrell				
	Lucas				
	Lewis				
	Gray				
	Mayor Jordan				

City Council Meeting: **October 6, 2009**

Subject:	**Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance)**				
Motion To:		Approve			
Motion By:		Thiel			
Seconded:		Petty			
C. 5	**Thiel**	✓			
New	**Cook**	✓			
Business	**Petty**	✓			
	Rhoads	✓			
passed	**Ferrell**	✓			
	Lucas	N			
	Lewis	✓			
	Gray	✓			
2/3-09	**Mayor Jordan**				
		7-1			

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

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams,** City Attorney

DATE: **October 7, 2009**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of October 6, 2009**

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8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Agenda Additions:

B. Unfinished Business:

1. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

2. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

C. New Business:

1. **2009 Sales and Use Tax Bond Ordinance:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

3. **Amend Chapter 50:** An ordinance waiving the automatic annual price increase for residential trash service for Fiscal Year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

4. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

5. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

Announcements:

1. **City Council Tour: October 5, 2009 - Arkansas Research and Technology Park**

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

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Matt Mihalevich	Engineering	Development Services
Submitted By	**Division**	**Department**

Action Required:

Staff requests approval of a resolution awarding Bid #09-57 and approving a contract with Danny Robinson Construction, LLC. in the amount of $91,044.00 for the complete installation of the 2 trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

$ 41,446.60 ~~36,451.60~~	$ 1,434,381.00	Trail Development
$ 63,254.00 ~~68,249.00~~	$ 129,285.00	Transportation Bond Trail Improvements
Cost of this request	Category / Project Budget	Program Category / Project Name
4470-9470-5814.05	$ 700,717.62	Transportation Improvements
4520.9520.5814.05	$ 60,035.11	Trail Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02016 / 4	$ 733,663.38	Sales Tax Capital Improvements
06036 / 1	$ 69,249.89	Sales Tax 2006A Construction Fund
Project Number	Remaining Balance	Fund Name

Budgeted Item X **Budget Adjustment Attached** ☐

Department Director — Date 09.21.2009

City Attorney — Date 9/21/09

Finance and Internal Services Director — Date 9/23/09

Chief of Staff — Date 9-23-09

Mayor — Date 9/22/09

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office

Received in Mayor's Office — ENTERED 9/22/09

Comments:

City Of Fayetteville

Requisition No.:

Date: 10/6/2009

P.O Number:

Expected Delivery Date: ASAP

Vendor #: 19353

Vendor Name: Danny Robinson Construction, LLC

Mail Yes: X No: ___

Address:

Fob Point:

Taxable Yes: ___ No: X

Quotes Attached Yes: ___ No: X

City:

State:

Zip Code:

Ship to code: 104

Divison Head Approval:

Requester: Ginny Gundlach / Matt Mihalevich

Requester's Employee #: 2283

Extension: 489

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Lake Fayetteville Trail Bridge Installation	1	Lot	$63,254.00	$63,254.00	4520.9520.5814.05	06036 / 1		
2	Lake Fayetteville Trail Bridge Installation	1	Lot	$27,790.00	$27,790.00	4470.9470.5814.05	02016 / 4		
3									
4									
5									
6									
7									
8									
9									
10									

Special Instructions:

Per Bid 09-57 and Res __-09

Subtotal: $91,044.00

Tax: $0.00

Total: $91,044.00

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Other: _____

A. 4
Bid # 09-57 Danny Robinson Construction, LLC
Page 2 of 2

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING ROCK QUARRYING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting could cause damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License** as shown below:

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

"

ARTICLE I.
Rock Quarry Operating License

"§113.01. Finding of Nuisance and Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

"§113.02. Abatement of Nuisance.

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

"§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

"§113.04: Definitions.

(A) "*Rock Quarry*" means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

(C) "*Operation of Rock Quarry*" means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

"113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance*. The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

"§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

"**§113.07: No reduction in property owner's right to sue for nuisance.**

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner."

PASSED and **APPROVED** this the 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

ORDINANCE AS AMENDED BY THE CITY COUNCIL ON SEPTEMBER 15, 2009

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING RED DIRT MINING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences to prevent noise, dust and fumes in excess of ADEQ limits from escaping the red dirt farm are properly regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

PASSED and **APPROVED** this the 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

EXHIBIT "A"

ARTICLE II.

Red Dirt Mining Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) *Operation of Red Dirt Mining Facility.*

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the red dirt mining to ensure the red dirt mining facility is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Red Dirt Mining Facility Operating License. (See §133.15)

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Red dirt mining*" means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) "*Operation of Red Dirt Mining Facility*" means any blasting, operation of any mechanical equipment on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the

engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

Stephen's Red Dirt Farm
Handed out at
Agenda Session
9-29-09

B.2

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING CERTAIN FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for certain facilities to supply necessary goods and services near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has determined that blasting, noise, and heavy truck traffic have the potential to cause damaging or nuisance effects upon nearby property; and

WHEREAS, the Fayetteville City Council has also determined that an operating certain facilities has the potential to cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects to neighboring landowners of the facilities; and

WHEREAS, the Fayetteville City Council has also determined that unregulated blasting, dump truck loading and other activities have the potential to be offensive to Fayetteville citizens and damaging to their property;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Heavy Use Facilities** of the Code of Fayetteville, Article II **Heavy Use Facility Operating License** as shown on the attached Exhibit A.

Stephen's Red Dirt Farm

PASSED and **APPROVED** this the 13th day of October, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

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

Stephens Red Dirt Farm

EXHIBIT "A"

ARTICLE II.

Heavy Use Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas finds that the operation of certain activities could potentially become a nuisance to the citizens and City of Fayetteville, Arkansas if performed other than as prescribed in §113.12 and, therefore, should be subject to the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(2) All blasting within the permitted heavy use facility shall only be allowed one day per week between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Heavy Use Operating License.

(B) *Operation of Heavy Use Facility.*

(1) All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 6:00 a.m. until 9:00 p.m. Monday through Saturday.

(2) All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Heavy Use Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(3) All heavy use facilities shall be allowed to work from 6:00 a.m. to 9:00 p.m. for a cumulative 120 hours on Sundays throughout the year for emergency weather related purposes. In the event a Heavy Use Facility Operator works on a Sunday, the immediately following Monday, said operator shall contact the Director of Development Services and report the Sunday activities.

(4) All heavy use facilities shall restrict and prevent all dump trucks operating upon said facility from utilizing the tail gate of the truck from dislodging material from the dump truck bed prior to 9:00 a.m.

(C) *Dust, Mud and Rock Control Measures.*

All heavy use facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed heavy use facility operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dirt and mud control measures.* The heavy use facility operator is required to comply with all state and federal regulations regarding prevention of material from leaving the heavy use facility.

(2) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the heavy use facility, the heavy use operator shall require any dump truck owned by or working for the heavy use facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The heavy use facility operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(3) *Only dump trucks with proper identifying number may be loaded.* The heavy use facility operator shall not load or permit to be loaded or permit to exit the heavy use facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all heavy use facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Heavy Use Facility*" means any location where dump trucks or other heavy trucks are operated, any location where rock blasting may occur, or any location where machinery may be operated.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) "*Operation of Heavy Use Facility*" means any blasting, or any operation of dump trucks or other large vehicles used for the purpose of loading the dump trucks on the premises of the heavy use site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the heavy use facility.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Heavy Use Facility Operating License upon proper application of an owner/operator of a heavy use facility within

Stephen's Red Dirt Farm

the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for heavy use operation. Any Heavy Use Facility currently in operation upon the enactment of this ordinance shall automatically be issued a permit.

(1) Subsequent to the initial license issued to the Heavy Use Facility, said license shall be renewed automatically each year upon the owner/operators presentation to the Director of Development Services valid federal, state, and county permits required for the heavy use operation. No fee shall be required for the renewal of the license.

(2) In the event a complaint is received by the Director of Development Services regarding the operation of a heavy use facility, upon notice, that facility shall have thirty (30) business days to correct any activity which may violate the terms of this ordinance before a hearing to determine a suspension or revocation of the Heavy Use Operator's License may be issued.

(B) *Suspension.* The Fayetteville City Council, after a public hearing where the heavy use operator is allowed to present evidence, may suspend a Heavy Use Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Fayetteville City Council, after a public hearing where the heavy use operator is allowed to present evidence, may revoke a Heavy Use Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Fayetteville City Council may require adequate assurances that any operator whose license has been revoked will fully comply with the Heavy Use Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the Washington County Circuit Court to determine whether suspension (up to 30 days) or revocation is appropriate for such violation. The Heavy Use operation may continue operations pending appeal of any suspension or revocation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a heavy use facility and any operator or manager of such heavy use facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Heavy Use Facility Operating License may be revoked or suspended by the Fayetteville City Council after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the heavy use facility not in conformity with its Heavy Use Facility Operating License.

(C) Any owner, operator, manager or lessee employee of a Heavy Use Facility shall be guilty of a criminal violation if such person operates the heavy use facility in violation of any of the terms of this ordinance, without a current and valid Heavy Use Facility Operating License, or in violation of any of the terms of his Heavy use facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Heavy use facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance shall be construed or used in a Court of law as evidence or a standard of conduct to determine if any heavy use facility constitutes a private or public nuisance, and this ordinance shall not act as a bar to a suit by a private citizen concerning the heavy use facility.

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

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

Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 6, 2009

A meeting of the Fayetteville City Council will be held on October 6, 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

Agenda Session Presentations:

1. Sales Tax Report and General Fund Budget Discussion – Paul Becker

2. Telecommunications Board presentation to the City Council concerning cable franchise recommendations.

Mayor's Announcements, Proclamations and Recognitions:

1. Methamphetamine Awareness Month Proclamation

Presentations, Reports and Discussion Items:

1. **Newspaper Publishing Discussion:** Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

A. Consent:

1. Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

2. **Bid # 09-54 Frost Oil Company:** A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

3. **Bid # 09-55 Electronic Video Systems:** A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

4. **Bid # 09-57 Danny Robinson Construction, LLC:** A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

5. **Bid # 09-58 Chevy of Fayetteville:** A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

6. **Bid # 09-59 Chevy of Fayetteville:** A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

7. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

12. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

Agenda Additions:

B. Unfinished Business:

1. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

2. **Red Dirt Mining Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

C. New Business:

1. **2009 Sales and Use Tax Bond Ordinance:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

2. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mills for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

3. **Amend Chapter 50:** An ordinance waiving the automatic annual price increase for residential trash service for Fiscal Year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

4. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

Announcements:

1. **City Council Tour: October 5, 2009**

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.

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

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

City of Fayetteville Arkansas
City Council Meeting Minutes
September 1, 2009

A meeting of the Fayetteville City Council will be held on September 1, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

Alderman Rhoads arrived at 6:50 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Consent:

Approval of the August 18, 2009 City Council meeting minutes.

Approved

2009 Community Development Block Grant: A resolution approving a budget adjustment in the amount of $13,891.00 to recognize the revenue of an increase in the 2009 Community Development Block Grant.

Resolution 183-09 as Recorded in the office of the City Clerk.

2009 American Recovery and Reinvestment Act: A resolution authorizing the Mayor to execute the funding approval/agreement with the U.S. Department of Housing and Urban Development to accept 2009 American Recovery and Reinvestment Act funding of Community Development Block Grant-R (CDBG-R) in the amount of $172,702.00; and approving a budget adjustment recognizing the grant revenue.

Resolution 184-09 as Recorded in the office of the City Clerk.

Bid # 09-53 Refuse Roll-Off Truck: A resolution awarding Bid # 09-53 and approving the purchase of one (1) Peterbilt Cab and Chassis from Downing Sales & Service in the amount of $124,750.00 for use by the Solid Waste Division; approving $20,000.00 to mount the salvaged roll-off body to the chassis; and approving a budget adjustment in the amount of $144,750.00.

Resolution 185-09 as Recorded in the office of the City Clerk.

Enforcing Underage Drinking Laws Mini-Grant: A resolution accepting the Enforcing the Underage Drinking Laws Mini-Grant from the Arkansas Department of Finance & Administration in the amount of $7,000.00; and approving a budget adjustment recognizing the Grant Revenue.

Resolution 186-09 as Recorded in the office of the City Clerk.

2009 Recovery Act Justice Assistance Grant (JAG): A resolution authorizing the Fayetteville Police Department to accept a 2009 non-matching Recovery Act Justice Assistance Grant in the amount of $456,807.00, $207,129.00 of which will be used by the Fayetteville Police Department for the purchase of equipment with $106,765.00 to be disbursed to the City of Springdale and $88,913.00 to Washington County; and approving a budget adjustment recognizing the Grant Revenue.

Resolution 187-09 as Recorded in the office of the City Clerk.

Clear Creek Riparian Management Education & Demonstration Project: A resolution approving the City of Fayetteville's participation in the Clear Creek Riparian Management Education & Demonstration Project in association with the University of Arkansas Cooperative Extension Service.

Resolution 188-09 as Recorded in the office of the City Clerk.

Alderman Gray moved to approve the Consent Agenda as read. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent during the vote.

<u>Unfinished Business:</u> None.

Public Hearing:

Blast From The Past Carriages: A resolution granting a Certificate of Public Convenience and Necessity to Blast from the Past Carriages for the operation of one (1) horse-drawn carriage within the City of Fayetteville, Arkansas.

Mayor Jordan opened the public hearing.

Police Chief Greg Tabor gave a brief description of the item. He stated they have provided all the necessary documentation.

Alderman Thiel: Are you and the traffic consultant okay with this plan?

Police Chief Greg Tabor: I personally like the alternate route better.

City Attorney Kit Williams: Do you have the hours and days that this is going to be allowed?

Angela Dritler, Owner of the Company: It would be Friday and Saturday night. She explained the packages that they are offering.

Alderman Lewis: You are going to be picking people up in front of Theo's. Are you going to be waiting on Campbell Street because that is pretty tight?

Angela Dritler: Around the back side of Theo's on Ralston is the road that we will actually pick them up. She explained the route.

Alderman Lewis: So you will just be circling clockwise around that block?

Angela Dritler: Yes.

Alderman Ferrell: Where have you used the carriages?

Angela Dritler: I moved here last September from Colorado and that is where I was doing most of my training and carriage business.

Alderman Gray: I think this will be a neat amenity for the City of Fayetteville and I would like to see us pass this tonight.

Marilyn Heifner with the Advertising and Promotion Commission asked how this would operate during special events on the Square. She asked if they could find alternate routes during those weekends.

Angela Dritler: My vehicle is going to be just like any car going through the square. It will go the same speed as the cars. It will not stop traffic. It will be flowing with the traffic.

Alderman Ferrell: You don't see any problem with the other carriages being up there around Christmas season?

Angela Dritler: The one thing it is going to do for the other carriages is draw attention to the carriage rides.

William Dritler: This is by private reservation only so only a patron of Theo's would even be executing the route.

Marilyn Heifner: We block off East Street between Mountain and Center so the traffic goes back to College.

Ray Dotson, owner of Ozark Mountain Carriages voiced his concerns regarding traffic issues during the Lights of the Ozarks.

Alderman Lewis: Do you block East Avenue entirely or just the one lane?

Ray Dotson: It is blocked off.

City Attorney Kit Williams: Even though the street is closed off to motorized vehicles I don't think it would be fair to one carriage company to close off the street and not allow another carriage company to use it. I don't think that is a problem.

Alderman Thiel: I agree with the City Attorney and I feel like this carriage company is not in direct competition. They are not going to stop.

Alderman Gray: It is my understanding that it would not stop. I don't see any conflict.

Alderman Lucas: The thing that concerns me about the alternative route is the corner of School and Dickson. It is a real congested corner.

Jeff Coles, Assistant Transportation Manager: Our concern was over the original proposed route and reducing the amount of time on Dickson Street.

Alderman Lucas: You are right there, but the other part of Dickson Street is not as congestive because it does not have as many venues. If it does cause a problem I guess we can change it.

Alderman Petty: I think it is fantastic that we have a business coming to Fayetteville like this. I think Ward 2 and our downtown patrons would welcome something like this and I am happy for it.

Mayor Jordan closed the public hearing.

Alderman Ferrell: I am going to view this as a form of economic development and I move for approval of the resolution.

Alderman Lucas: Are there going to be taxes collected off of the fares?

Don Marr: If it qualifies under the State guidelines we will be collecting taxes.

Alderman Lewis: Is the route flexible?

City Attorney Kit Williams: The ordinance designates the traffic superintendent to describe and accept the route.

Alderman Ferrell moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent during the vote.

Resolution 189-09 as recorded in the office of the City Clerk.

New Business:

Budget Adjustment For Operations: A resolution approving a budget adjustment transferring $600,000.00 from the Sales Tax Capital Fund to the General Fund for operations in order to offset revenue decline for FY2009.

Paul Becker, Finance Director gave a brief description of the budget adjustment.

Alderman Cook: I don't like it but I believe it is a necessity. Typically we roll that money forward every budget year if we have any surplus and it does not look like we are going to have any surplus to roll forward. We are stuck where we are at.

Alderman Ferrell: We have already taken some steps and we know our revenue is not going to be like it has. There is going to be some hard reckoning with this budget. We have to do this but we are going to have to make some decisions that we have never had to make before. We can't neglect the capital needs.

Mayor Jordan: Both comments were good. I just have so much coming in and so much going out. We are going to have to make some tough decisions in the next budget. It's going to be tight.

Alderman Lewis: Thank you for looking at efficiencies and trying to cut costs as much as possible. I hope those kinds of practices are for the long term and not just an emergency way of thinking.

Paul Becker: We certainly tried to factor that into our thought process.

Alderman Lewis: Thank you for working to identify this type of budgeted money.

Alderman Thiel: I want Administration to be very careful about filling positions that are really needed for the services of people and that we don't get to a point to where we cannot fill positions that are vital.

Mayor Jordan: We look at most positions when they leave now to make sure that they are positions that we need. So far we have been able to fill those but I cannot guarantee that we are going to be able to continue to do that. It is pretty tough but we will get through it.

Jim Lobler, a citizen: I have a problem with shifting funds that are dedicated to something. How is that money going to get back in there?

Mayor Jordan: I could take it out of reserves right now but I have tried to save as much of the reserves as I can because we may need it next year. I don't know if we can get that back. This is money that probably will not be spent because most of the road crews were picking up debris for three or four months and that is where this money came from.

Jim Lobler: So it is not matching funds?

Mayor Jordan: No.

Paul Becker: No it is not. This is what it costs for us to program the fund per year and next year we will be back right on schedule. This happened to delay us because of the shift in personnel to the debris removal we had this year. He described other attempts to address the issue so the entire burden did not have to be on any particular area.

Don Marr: If we weren't moving this money today for our budget short fall there is only so much work that can be done with the existing staff that you have even if we had rolled this project forward. So we don't have the revenues to support additional overtime or additional hiring to make this up. So what we lost in moving this money really was lost as a result of an ice storm and diverted work that couldn't be done because we had to handle a $5 million cleanup. While the ice storm was terrible and delayed projects it is providing us a savings that is not necessarily affecting an additional cut.

Alderman Lewis: We budgeted that money and that work did not happen. So the money is there and the year is going to run out before that work gets finished. You are requesting to move that money to the General Fund since it did not get used.

Don Marr: Correct, and we actually could have done the work in 2010 but it will require extra head count and overtime which we don't have nor do we anticipate being able to afford.

Alderman Ferrell: The gentleman's comment was you go to reserves for emergencies but at the same time we need to be fiscally sound. When times get better we need to build our emergency fund back up. We did respond to emergencies with our emergency fund and would go to the General Fund if we had to.

Mayor Jordan: Even when we get through the hard times and things begin to recover that does not necessarily mean we can go on a spending spree. We are going to have to build back what we lost.

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

Resolution 190-09 as recorded in the office of the City Clerk.

EPA Region 6 Wetland Program Development Grant: A resolution authorizing acceptance of an EPA Region 6 Wetland Program Development Grant in the amount of $234,000.00 for a stream restoration demonstration on Niokaska Creek through Sweetbriar Park and other properties; and approving a budget adjustment recognizing the grant revenue.

Carole Jones, Park Planner II told the Council that she would be happy to address any questions.

Alderman Lewis: What was the history on choosing this reach for this grant?

Carole Jones: This grant is a wetlands grant and one of the things that Sweetbriar has to offer is it allows it to qualify for that grant because it has the potential of creating a wetland. That is one of the things that you have to show that you can achieve with that grant money. There is a small area that is trying to form a wetland and I believe it is on the east side of the bank in the park area.

Alderman Lewis: Where is the funding coming from for the match?

Carole Jones: The City's match is $78,000 because it is a 25/75 matching grant. The City's Engineering Division and the Parks and Recreation Division are splitting the match and that is based on the percentage of link in the park area and outside of the park area. The Engineering fund is coming from the drainage studies and Phase II Stormwater Improvements Fund and then the Parks and Recreation's share is coming from the Gordon Long Red Oak Improvements Fund which is what the budget adjustment in the packet is asking for.

Alderman Ferrell: Do you think this demonstrates to others the willingness of Northwest Arkansas communities to try and help the Illinois River?

Carole Jones: I certainly do. This just further improves the water quality from the whole reach going to mud creek which is a tributary to the Illinois River. The amount of reduction in sediment and phosphorous is very high on what you can achieve by doing these types of projects.

Alderman Ferrell: It is kind of a critical thing right now.

Carole Jones: Yes sir.

Alderman Cook: So if we take this money out of the Red Oak Park project where does it leave that park? Do we have any idea of what that will potentially cost?

Carole Jones: We don't have any idea what it will potentially cost but we do have funding left in the Red Oak Project. Some of it is park land dedication funds and some of it is parks development fund and then some of it is the remaining sales tax fund.

Paul Becker: After this there would remain approximately $56,000 in sales tax capital funds for Red Oak Park plus in excess of $39,000 in the Park Development Fund for that. There would be approximately $96,000 for that program remaining after this.

Carole Jones: We did not plan to move any money from Red Oak but this grant opportunity came along and we did not have any other place to take the money from.

Alderman Cook: What was the estimated cost of the original Red Oak Project?

Carole Jones: It was right under $100,000.

Alderman Lucas: It was $140,000 wasn't it?

Carole Jones: No ma'am, it was between $95,000 and $100,000. Now we had that much money in those two projects.

Alderman Cook: So this potential revision we are looking at do we think it is going to be cheaper or the same cost?

Carole Jones: It is probably going to cost a little bit more but Chris Brown in Engineering has agreed to fund portions of that which is not on our property from his drainage improvements fund.

Alderman Cook: Obviously we want to take grants when we can get them but we made a promise to the people at Red Oak and I don't want to back out on that. I want to be reassured that we can provide for them what we originally promised them.

Chris Brown, City Engineer stated we do have funding available and there is a section downstream of Red Oak Park that we have committed to the property owner that we will make some improvements there. Staff understands the commitment that the Council made and we are committed to see the project through. We are really trying to find a good fit that meets everybody's needs that we can get permitted.

Alderman Cook: The bottom line is we have more drainage problems than we have money to throw at.

Alderman Thiel: There was a real outcry with the second plan that there was going to be so many trees lost and it sounds like that even though it is going to take longer it is going to be a much better plan. Engineering still has $452,000 left in their drainage fund and I feel like there

will be funding to finish this project once you get the plans and it goes before the people that live there again. I feel like this is a good project and I will support it.

Alderman Lucas: Chris, the problem below Red Oak Park goes into Clabber Creek does it not?

Chris Brown: It goes into Hamestring Creek.

Alderman Lucas: I mean Hamestring which goes into the Illinois River.

Chris Brown: Yes.

Mayor Jordan: To give the Council a little bit of background, in April we voted to go after this grant. It was something that we were instructed to go after and we did and here we are. The question is we either do or don't.

Alderman Lewis: I would like to comment that there is a common theme here and I hope that Engineering and Parks staff will think about this. The reason there is a problem in Red Oak Park is because there is cement on the ground and water is running fast off of it and the roofs. There was no ditch before there were developments around it. That caused a gulley. Now we are having to pay lots of money to fix that. If we would approach it at a watershed scale and slow the water down and let it soak into the ground this would be cheaper in the long run and a lot less work. I will work on helping the staff find funding to fix Gulley Park and I want it to be watershed base not just piping it.

Alderman Lucas: I want to make sure that everyone understands that Red Oak Park is in a terrible condition. It has been neglected over the years and has progressively gotten worse. It should be a priority. I can't support taking money from it.

Alderman Ferrell: Chris, can you see a way to get storm control money to use or are we prohibited to use that in Red Oak?

Chris Brown: I don't think we would be prohibited. It is a drainage project that could certainly be used in the park.

Alderman Ferrell: We are talking about $100,000.

Chris Brown: We have this fund and another drainage project fund for upper Scull Creek drainage which is a fund we are using to do some improvements there. We do have funds available for drainage. We have a lot of needs and we are evaluating those priorities.

Alderman Ferrell: There is interest in doing both but I would be willing to wait and have you take a look and come back and see if we can take advantage of both of these if there is not a time point pushing us on the grant.

Carole Jones: There are deadlines and we do need to respond back and accept the grant.

Sandi Formica with the Watershed Conservation Resource Center stated they are wanting everything to be submitted by November 1st but it should be submitted as soon as possible. October 1st would give us a November 1st start date.

Alderman Ferrell: The question is would two more weeks give you time.

Sandi Formica: Two more weeks is fine for the grant application. We would like to submit it as soon as possible but I don't think that is going to keep us from getting the grant.

Alderman Thiel: I don't understand why we need two weeks to make a decision on this. It sounds to me like we have the funding.

Alderman Ferrell: If we get the commitment that we can do both then we don't. We can do it tonight.

Don Marr stated per your direction from Agenda Session the $42,000 was directed to be dedicated out of that $400,000 to replace the money. We are setting aside the same amount of money that we are asking to be moved today to replace what we are talking about moving to get this grant. They both are going to be funded. He went on to explain the funding.

Mayor Jordan asked the City Attorney if he had the authority to direct Chris to put the money back into Red Oak or if that required Council's approval.

City Attorney Kit Williams: It depends on how it was budgeted. You can't make budget adjustments yourself only the Council can do it. I think the Council is unanimous that both these projects are going to be done and there is money to do both projects so I don't think that will be a problem.

Mayor Jordan: I am going to commit to the Council that I will see that the money come out of the drainage fund and back into Red Oak.

Alderman Lucas: Since we have that commitment I can support this.

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

Resolution 191-09 as recorded in the office of the City Clerk.

Watershed Conservation Resource Center: An ordinance waiving the requirements of formal competitive bidding and approving a Memorandum of Understanding with the Watershed Conservation Resource Center (WCRC) in the amount of $188,000.00 for a Stream Restoration Demonstration Project on Niokaska Creek through Sweetbriar Park.

City Attorney Kit Williams read the ordinance.

Carole Jones: This is related to the last subject. Does anyone have any questions for us?

Alderman Lucas: Could you explain why you are waiving the requirements of formal competitive bidding?

Carole Jones: One of the reasons is they have submitted their statement of qualifications to Purchasing so what we are really asking the Council to do is waive the Selection Committee process which is normally formed in house so that we can move forward with the grant and submit the application to stay on the EPA's timeline.

Alderman Lewis: Isn't it true that the Watershed Conservation Resource Center helped write the grant or found the grant?

Carole Jones: They found the grant and they did help us with the grant proposal and were also listed as a sub awardee. They were able to fill out additional paperwork to submit to the EPA as a partner of the City for this project.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5268 as Recorded in the office of the City Clerk.

VAC 09-3375 (Teresa Al-Ansari): An ordinance approving VAC 09-3375 submitted by Alan Reid for property located at 2831 North Sherwood Lane to vacate a portion of a utility easement containing approximately 497 square feet.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the item. He stated staff and Planning Commission are recommending approval.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5269 as Recorded in the office of the City Clerk.

ADM 09-3256 (Fayetteville Alternative Transportation and Trails Master Plan Update): A resolution amending the Master Trail Plan Map to illustrate completed trails and to update future trail corridors and on-street bicycle facilities.

Matt Mihalevich, Trails Coordinator gave the history of the Trails Master Plan. He stated we want to upgrade the plan to show the built trails and also look at connectivity. The three items here are linked together. There is an amendment to the City Plan and also to the Unified Development Codes. The goal there is to help the developers that come forward with a project. We can tell them where the trails will be which helps them know what to expect.

Alderman Lewis: I think it's a great idea. I am wondering if there would be other types of transportation added to it because it's an alternative transportation and trails.

Matt Mihalevich: This covers bicycle and pedestrian and that type of transportation. We are changing the Master Street Plan to be Master Transportation Plan so there could be other aspects within the Master Transportation Plan for bus stops and things but not specifically this plan.

Alderman Lucas: Where does the east west go?

Matt Mihalevich: We are looking at a Hamestring Creek Trail and we are looking at going underneath the highway at I-540 but there is an existing culvert under there and we are hoping we can use that and then bring it back into Scull Creek. Another good place is under Porter Road and then possibly across the Agri Farm which would get us right to Scull Creek.

Alderman Cook: Sidewalk and Trails, Parks and Recreation Board, and Planning Commission looked at it and everyone was on board with it. We are trying to make this a little more efficient and we are trying to be fair to the development community as to what we are going to ask from them.

Alderman Lewis: What are the plans for bike lanes on Mount Comfort Road?

Matt Mihalevich: A 14 foot wide outside lane will be built with the sharrow symbol which is a new symbol that is a bike symbol with two chevrons which directs the direction in which the

bikes are traveling. It helps align them in the lane. It is considered a shared lane but it is wide enough to accommodate both.

Alderman Ferrell: If we had a human powered vehicle and they wanted to do it for profit would they be prohibited from running on the public trails?

City Attorney Kit Williams: They are really not a bicycle but that is something for you all to finally decide and you can determine what kind of vehicles you want to allow on the trail.

Jim Lobler inquired about an electric bike for someone with a disability.

City Attorney Kit Williams: The City Council did authorize the use of electric bicycles on the trails for exactly people that are yours and my age that might need a little assistance.

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

Resolution 192-09 as recorded in the office of the City Clerk.

ADM 09-3256 (Amend City Plan 2025): A resolution amending the Master Street Plan in City Plan 2025 to add trails as a transportation component.

Karen Minkel, Director of Strategic Planning and Internal Consulting gave a brief description of the amendments.

Alderman Cook: I like this shift because now it's the Transportation Plan. I have always felt there were many more pieces to that puzzle than what we have shown before. This finally puts it into our City Plan 2025.

Alderman Lewis thanked them for putting thought into this. She stated you can tell there is revitalization along those areas and I think it is really good.

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

Resolution 193-09 as recorded in the office of the City Clerk.

ADM 09-3256 (Amend Chapter 166 & 171): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 166: Development and Chapter 171: Streets and Sidewalks in order to codify trail easement acquisition policy and to adopt trail construction standards.

City Attorney Kit Williams read the ordinance.

Karen Minkel gave a brief description of the amendments. She stated this item codifies the trail easement acquisition and trail development standards.

Alderman Cook: I wish we could have made stronger language but I think this was appropriate. It's a good step and it will certainly help in the construction of our trail systems as we move forward. I appreciate all the effort staff put into it.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan thanked Alderman Cook for all his work on this.

Alderman Ferrell: Karen the amendments to the UDC have the force of an ordinance but the 2025 Plan is a planning tool is that correct?

Karen Minkel: That is correct. It is guiding.

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

Ordinance 5270 as Recorded in the office of the City Clerk.

ADM 09-3345 (UDC Amendments): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapters 163: Use Conditions, 164: Supplementary Zoning Regulations, and 166: Development in order to resolve inaccurate cross references, eliminate unnecessary repeated information, and improve overall clarity and readability of the code.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance.

Alderman Cook: I appreciate staff's continued efforts to clean up the code.

Alderman Ferrell: In reading through the part about the surveying it looks to me like it is just codifying reasonable expectations. Was that the intent there? Professional surveyors are charged with doing things according to state laws anyway.

Jeremy Pate: Exactly right, they have to abide by state laws anyway. Our codes were written many years ago so the codes are outdated and don't even apply any longer so we simply reference the state codes, so as those are updated our code will refer to those.

Alderman Lewis: On one of the setbacks in the parking garage part it said that they had to be set back from an easement 25 feet and you have landscaping in there. Can that include store front in the 25 feet or does the store have to be back 25 feet also?

Jeremy Pate: In Section 13, that is #2 and there are three options for those. One is to include a store front. The second is to include a green or vegetative wall along with roof gardens and things of that nature. The third option is to set back the parking garage that required 25 feet and landscape that 25 feet until such time as they are ready to add the retail phase or whatever it happens to be. It allows for that flexibility in the future.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5271 as Recorded in the office of the City Clerk.

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances.

City Attorney Kit Williams read the ordinance.

Alderman Lucas: Sarah and I brought this forward because of the residents in Ward 4. There was a red dirt farm and now they are blasting for rocks and limestone. It is quite a nuisance and it is a safety issue too. I have had numerous calls and complaints about rock falling off of trucks and hitting vehicles. She went on to list the complaints she has received. She stated we thought it was something we could bring forward and see if we could give them some relief.

Alderman Lewis: Back in May we attended a meeting with the Neighborhood Association out there and that discussion led to this. This also addresses any and all of these kinds of operations, not just the operations on the west side of town. As Fayetteville grows it may come in contact with other situations such as this and we are trying to address those nuisances so that the

individual property owners are protected as well as a balance between that and the businesses. It is intended to give some relief to Fayetteville residents.

Billy Sweetser, Co-owner of Big Red Dirt Farm spoke in opposition of the ordinance. He stated we would certainly like some input because we have never been invited to any meetings. This ordinance could have a massive financial impact on our business. I would like the opportunity to visit with Alderman Lucas and Lewis and in the future I would like for you to send it to the Ordinance Review Committee. We respectfully request that you send this back for further evaluation and input on the rules.

Alderman Ferrell: No one from the City has ever contacted you about proposing this ordinance?

Billy Sweetser: No sir. We have not been notified.

Alderman Ferrell: There are citizens outside and inside the county, but neither one of those groups have contacted you about this ordinance coming up?

Billy Sweetser: No sir.

City Attorney Kit Williams: As I wrote in my memo I certainly don't think this ordinance should be passed tonight. We would like to get input from the developers. It has been on the front page of the NWA Times as far back as February 17th which is the first time we went and met with some of the residents there. There have been some stories in the press but they have not been specifically invited. I am glad they are here tonight and I would invite them to give us their input. I would recommend that it go back to Ordinance Review and specifically request that Mr. Sweetser and his partner and anyone else would come and present your concerns and proposals. That would be helpful to the City Council.

Billy Sweetser: I am not here to represent any other quarries or red mines but we certainly have some input.

Alderman Lucas: Have you met with the residents that have been having problems with this?

Billy Sweetser: With this issue?

Alderman Lucas: This problem with the red dirt farm.

Billy Sweetser: We probably get 20 calls a day.

Alderman Lucas: Have you met with them?

Billy Sweetser: From time to time yes, individuals, not as a group.

Alderman Rhoads: I am on the Ordinance Review Committee and I either thought that the owners had been contacted or was just mistaken. I certainly believe that we should not pass this.

I don't know if it needs to go back to the Ordinance Review Committee or if it just needs to be discussed in some meetings and have the full Council vote on the potential changes. I certainly want your input. You said there is another quarry as well?

Billy Sweetser: Yes, there is one that is our next door neighbor.

Alderman Rhoads: I certainly want their input.

Alderman Lewis: The intent of this has been a slow process. I don't feel like this has been a secret. I have a little trouble with the fact that the residents have been contacting you or your company and neighboring operations complaining about these nuisances and yet not very many efforts have been made to make any improvements.

Billy Sweetser: You have been misinformed.

Alderman Lewis: I am open to hearing about that but I find it hard to believe that these kinds of things are still happening after many months of difficulty between the two parties.

Billy Sweetser: We get a call that says your blast shook our house when we didn't blast. We respond and say that we did not blast and that is not satisfactory because they think we did. I don't know where you go with that. I don't want to debate that.

Alderman Lewis: I understand and that is why we have tried to make it a slow process. I am willing to go back to Ordinance Review but I just want to make sure that it's open. This ordinance is an attempt to balance both sides.

Alderman Thiel referenced the race track issue. She stated that issue took about six months.

City Attorney Kit Williams: I don't think it took that long once we brought it to the City Council.

Alderman Thiel: We can take this back to Ordinance Review and have the public be at those meetings again and all of the representatives need to be there. It also could be something the City Attorney could discuss.

City Attorney Kit Williams: I do think it would be good to go to the Ordinance Review Committee because it is a more informal setting and you can discuss easier. I would be happy to speak with them and their attorneys about any proposed changes they have before the Ordinance Review Committee meets. I am going to remain guided by you all. I will only do what you have told me to do.

Alderman Lucas: It bothers me to send it back to Ordinance Review. I have no problems with Mr. Sweetser reviewing the Ordinance and talking with you about the things that he thinks should be changed and bringing it back to the Council. We are talking about a safety issue here. She went on to express her concerns. She stated I don't want this to be a long process if

possible. Could you review the ordinance, talk to Kit and then come back to the Council and explain your suggestions?

Billy Sweetser: Sure.

Alderman Lucas: I think we could take it to the second reading and then if we want to hold it the next time we can.

Alderman Thiel: I would be more in favor of leaving it on this reading and take this through three full readings. Why don't we just wait and see what they come up with and what discussion the City Attorney and them have between now and the next meeting.

Alderman Ferrell confirmed what was previously discussed. He asked the City Attorney if he was comfortable meeting with them. We can try to go to Ordinance Review next time but that is going to make it longer.

City Attorney Kit Williams: I would not think that you would table it you would just leave it on the first reading and whether it goes to Ordinance Review is up to them. He went on to explain the options.

Alderman Ferrell: If the Council recommended that it go to Ordinance Review Committee then it would go.

Alderman Thiel: I tend to agree with Shirley. We have not heard what they oppose and this is just one representative. It would be nice if we could get clear direction.

Alderman Rhoads: I would want whatever you and the other folks that think they are impacted by this to in writing give me what changes you would make in the ordinance and then give us a chance to study those before we have a sit down conversation.

Alderman Petty: As long as we see something from Mr. Sweetser and a representative from the other mine and Kit gets to review that before it comes to the Council or the Committee I don't care as long as that happens.

Alderman Lewis: Having an Ordinance Review Committee meeting does not change the next time that we discuss this at the Council level.

A discussion followed on whether or not to send it to Ordinance Review Committee.

Marian Bolin, a resident of Hamestring Road spoke in favor of this ordinance. She stated that many neighbors would also like to be able to give some input and I am in agreement with more discussion from all sides.

William Henson, a dump truck operator spoke in opposition of the ordinance and pointed out that some of the proposed regulations would also affect City dump trucks since they do not meet the criteria currently.

This ordinance was left on the First Reading.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: I assume we will leave this on the first reading.

This ordinance was left on the First Reading.

Agenda Additions: None

Meeting adjourned at 8:20 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

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

City of Fayetteville Arkansas
City Council Meeting Minutes
September 15, 2009

A meeting of the Fayetteville City Council will be held on September 15, 2009 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

Presentations, Reports and Discussion Items: None

Nominating Committee Report

Alderman Cook presented the Nominating Committee report.

Alderman Adella Gray moved to approve the Nominating Committee report. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Approved

Consent:

Arts Live Theatre: A resolution approving the lease agreement with Arts Live Theatre d/b/a/ Arts Live for use of the property at 818 north Sang Avenue.

Resolution 194-09 as Recorded in the office of the City Clerk.

2009 Edward Byrne Memorial Local Solicitation Grant: A resolution authorizing the Fayetteville Police Department to accept a 2009 Edward Byrne Memorial Local Solicitation Grant in the amount of $111,387.00, $50,506.00 of which will be used by the Fayetteville Police Department with $39,201.00 to be disbursed to the City of Springdale and $21,680.00 to Washington County; and approving a budget adjustment.

Resolution 195-09 as Recorded in the office of the City Clerk.

2009-2010 Justice Assistance Grant: A resolution accepting the 2009-2010 Justice Assistance Grant for federal and state funding in the amounts of $164,306.00 and $32,861.00 respectively as the primary funding for the 4th Judicial District Drug Task Force; and approving a budget adjustment to recognize the grant revenue.

Resolution 196-09 as Recorded in the office of the City Clerk.

TranSystems Corporation: A resolution approving an agreement with TranSystems Corporation in an amount not to exceed $58,598 for the inspection, analysis, and a feasibility report providing technical guidance for the rehabilitation of the two historic overpass bridges on Lafayette and Maple Streets.

Resolution 197-09 as Recorded in the office of the City Clerk.

Bid # 09-52 United Engines, LLC: A resolution awarding Bid # 09-52 and approving the purchase of seven (7) emergency standby generators from United Engines, LLC in the total amount of $104,562.00 plus applicable taxes for use at wastewater lift stations; and approving a budget adjustment in the amount of $5,000.00.

Resolution 198-09 as Recorded in the office of the City Clerk.

Garver, LLC: A resolution approving a contract with Garver, LLC in an amount not to exceed $88,340.00 for engineering services associated with the rehabilitation of the Lake Wilson Spillway; and approving a budget adjustment.

Resolution 199-09 as Recorded in the office of the City Clerk.

Economic Development Services: A resolution to approve a two year contract for Economic Development with the Fayetteville Chamber of Commerce in the amount of $250,000.00 and to approve the attached budget adjustment.

Resolution 200-09 as Recorded in the office of the City Clerk.

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

The following item was added to the agenda at the City Council meeting:

Alderman Thiel moved to add the Energy, Efficiency and Conservation Block Grant to the agenda. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

Energy, Efficiency and Conservation Block Grant: A resolution to accept a $724,900.00 Energy, Efficiency and Conservation Block Grant and to approve a budget adjustment recognizing the revenue.

John Coleman, Sustainability Coordinator gave a brief description of the item.

Mayor Jordan stated this is a good thing. This is some of the first stimulus money we've had to come in.

John Coleman stated we do have several other grant applications out there for stimulus dollars through the Department of Labor through the State Energy Office. A lot of those decisions have not been made yet so we are still waiting to hear on some of these other grants.

Mayor Jordan commended John for his hard work.

Alderman Ferrell congratulated John and asked if some of the other grants that may be coming were also no match grants?

John Coleman stated there are a lot of opportunities for no match grants and those are the ones that we are pursuing. If there's anything that requires a match certainly we would come to Council first before we apply.

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

Resolution 201-09 as recorded in the office of the City Clerk.

Unfinished Business:

RZN 09-3271 (Sale Barn/Campus Crest LLC): 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. *This ordinance was left on the First Reading at the June 16, 2009 City Council meeting. This ordinance was left on the Second Reading at the July 7, 2009 City Council meeting. This ordinance was left on the Third Reading at the July 21, 2009 City Council meeting and tabled to the August 18, 2009 City Council*

meeting. This ordinance was left on the Third Reading at the August 18, 2009 City Council meeting and tabled to the September 15, 2009 City Council Meeting.

Jeremy Pate, Development Services Director gave a brief description of the item. He stated the applicant submitted a signed Bill of Assurance to the City Clerk's office today. I will let the applicant present that simply because it is their proposal to you. It is not something that the Council or staff has requested or required. It is something to encourage you to support the zoning from the applicant. Staff and Planning Commission supported this application.

Alex Elyssen, Regional Development Partner for Campus Crest Communities gave a brief presentation about the project. He stated we are proposing a luxury student housing community. This is a down zoning to Downtown General. Downtown General is a less intense property use. It includes single family and multi family dwellings. Currently the property is zoned I-1 which is classified as heavy commercial. This zoning is a very intense land use. There are several considerations that are to be relied upon in a rezoning request. The most significant is compatibility with surrounding zoning. An analysis of the zoning and permitted uses of the adjacent area is also appropriate and legal however a subjective or idealistic analysis is not appropriate or legal. There are four major principals that can guide this Council in making a decision tonight. Those four principals are the City's own 2025 Plan, the Planning department's recommendation, the Planning Commissions decision, and the existing zoning in the area. If the Council looks at those four issues a clear determination will reveal that this is an appropriate request before the City Council.

In reviewing the City Plan 2025 goal one is to make appropriate infill and revitalization our highest priority. This is without a doubt infill and revitalization. We will discourage suburban sprawl. We will make traditional town form the standard. Goal four we will grow a livable transportation network, through our project we hope to connect with the University of Arkansas's transportation system. We will assemble an enduring green network. Our last goal is to create attainable housing. Student housing is attainable housing. The Planning staff found that the adopted policies and objectives of the City Plan 2025 support a Downtown General zoning. The Planning Commission approved this recommendation 6-1. The land that surrounds the applicants land is RMF-24 or Downtown General with the exception of one small area to the north.

A copy of the zoning map was presented to the Council.

The factors that are not permissible in any rezoning are the opinions of local residents unless it reflects logical and reasonable concerns. Spot zoning is also something that can not be considered. Rezoning this property anything but Downtown General or RMR-24 would result in spot zoning. We feel that the request before you tonight satisfies all the goals in the 2025 Plan, the Planning department's recommendations, Planning Commissions decision and the existing surrounding area.

We have presented a Bill of Assurance. In the Bill of Assurance is a three story height restriction of the property closest to the cemetery. There also shall be a density limit. The Bill of Assurance would involve a pedestrian trail and a connection to the trail to Government Avenue for pedestrian traffic. We want to incorporate native vegetation and two full access

points both in and out on various ends of the property. We hope to incorporate a rain garden, detention facility, and a storm water quality basin in two areas of the property. We are proposing on street parking consistent with the urban landscape designs. We will dedicate park land to the City of Fayetteville.

I am here on behalf of Campus Crest, Dave Jorgenson and Jorgenson Associates, and Mr. Bartholomew to request that this Council approve this rezoning because we feel like we have satisfied all the elements that a City Council should look at, wants to look at, and needs to consider.

Alderman Ferrell: How much of a capital investment would you guys be making in Fayetteville?

Alex Elyssen: The studies we have done here and in other markets typically the first year impact, that stays locally to a City and County, is about $8.6 million to a City. Overall it's a very significant economic impact to a City and the County.

Jim Buckner, a citizen stated that his plea is to resist the rezoning of the sale barn property from industrial to business general. This will give our community, Mayor, and City Council sufficient time to address the more favorable zoning to Community Conservation which is a designation that is appropriate and consistent with this current usage.

Mayor Jordan asked Mr. Buckner where he resides.

Jim Buckner: I live at 5413 West Wheeler Road, Fayetteville, AR.

Mayor Jordan: When you introduce yourself it has been requested by an Alderman that you would also give your address.

Pamela B. Hughes stated that more acreage is desperately needed for the veterans.

Leonard McCandless a lifelong native of Fayetteville: I am speaking on my behalf and as President of the Ozark Military Museum. We believe that rezoning of the sale barn property to Downtown General is not a proper neighbor for a national cemetery. The Fayetteville National Cemetery is a place of honor and should be treated as such.

Cynthia Christie Peven, a resident of Ward 1 spoke on behalf of her parents Arnold and Margaret Christie who live at 920 South Hill Avenue. I am against the rezoning of this property at this time. RMF-24 zoning is not appropriate for this area. The zoning should be Neighborhood Conservation. This location does not support this kind of density and the surrounding infrastructure of streets does not support the level of traffic that the density will generate.

This property backs up against the cemetery. My plea is the City needs to help us preserve the value of those properties, preserve them as residences, and preserve the integrity of the neighborhood with better zoning. Please do not change this zoning.

Robert Williams, 957 South Hill, stated he hopes you will keep the neighborhood zoning.

Bob Daugherty, 2745 Hidden Springs Drive spoke in favor of the rezoning.

Mark Silva, a resident of Fayetteville spoke in favor of the development and rezoning.

James Laubler, retired Special Forces and resident of Ward 4 spoke in opposition of the rezoning.

Leonard Shultee, 1235 Southwest Avenue spoke in opposition of the rezoning. He stated he is concerned with the density and the traffic problems if rezoned.

Dave Jorgenson, Engineer for Campus Crest spoke in favor of the rezoning. He stated there are other properties in the area that the cemetery can purchase.

Rita Miller, representing the Northwest Women's Military Veterans spoke in opposition of the rezoning.

Kathy Kisida 1227 Southwest Avenue asked the Council to please not make a decision that will affect us so drastically without a charrette.

Aubrey Shepherd, a citizen stated please don't allow this rezoning.

Alderman Ferrell: You said you are a member of the Regional National Cemetery Improvement Corporation?

Aubrey Shepherd: Yes sir.

Alderman Ferrell: In visiting with a couple other members it's my understanding that part of their objective is to pursue parcels of land around the cemetery not the sale barn. Would you say that is accurate?

Aubrey Shepherd: They have been doing that, they have one parcel already bought next to Hill Avenue. Some of the land west of the National Cemetery is in the critical recharge area.

Alderman Ferrell: How much of the City of Fayetteville is not over or close to karst topography?

Aubrey Shepherd: I cannot guess that because looking at the map you can just pin point the critical spots. You can see that most of the old pastures and fields that were formally prairie area are part of the recharge area.

Alderman Ferrell: I remember when we were working on the hillside ordinance we had maps and they were saying that we had karst topography everywhere around this part of the country.

Aubrey Shepherd: Yes, and it indicates we need special care and special planning on the hillsides as well as in the wetland areas.

Wanda Peterson, 1325 South Ellis stated we feel like we are being pushed into a situation and you are the only ones that can help the situation. I would like to see this zoned Neighborhood Conservation.

Michele Raine, resident on South Dunn stated I believe that Downtown General is not appropriate for our neighborhood. She also voiced her concerns about the traffic this development would cause. She stated we are asking the City Council to deny this zoning request so we can help maintain the quality of our environment so we can all work together to develop an appropriate zoning plan for our neighborhood.

Dustin Bartholomew, Ward 4 resident stated he thinks Downtown General works well as a buffer between a heavy commercial area and the neighborhood. Density is needed in the downtown area to support light rail and regional transit. This property is one mile from the downtown square. It is the definition of our downtown area. These are the areas in Fayetteville that we have to look at infill. This is consistent with the 2025 plan that is helping to guide our City.

Alderman Petty: The neighbors here are fearful and I can't really blame them. We can help them by rezoning the core of the neighborhood to Neighborhood Conservation but we do not have to take an all or nothing approach. This property is not the core of the neighborhood, it is not in the middle of the neighborhood, it is on the edge. There are only one or two single family residences that actually border this property. Except for the cemetery every side is bordered by commercial. To me that means that this property fits the very definition of what Downtown General is suppose to be. We do not have too many apartments in Fayetteville we have too many apartments in wrong places. Everyone knows that light rail needs higher density to be supported. Rezoning this property to Downtown General is probably what we need to do to support that vision. It is not easy for me to vote yes but almost nothing in life that is worth it is easy.

Alderman Cook: I support density but there are a lot of different faces of density, some good, and some bad. In my opinion this is not just about density. With all due respect it is not about the veterans or the Bartholomew's. It is about whether we see this zoning as appropriate for this piece of land. I do not think Downtown General is the right zoning for this piece of land.

Alderman Lewis: In Downtown General there are opportunities for mixed use but you don't have to use mixed use. Is that right?

Jeremy Pate: That's right.

Alderman Lewis: Where is the highest point? Is it sloping towards the stream?

Jeremy Pate: Most of the property slopes to the north northeast generally.

Alderman Lewis: The traffic is a major issue with this zoning. The Police Department stated this zoning could lead to significant impacts on traffic and does not recommend this project. How is the traffic being addressed?

Jeremy Pate: One of our considerations in a zoning application is whether an application will considerably and undesirably create a traffic congestion situation. The Police Department reviews these applications without any improvements in them. Those are issues that we typically would address at the development level. The applicants have already prepared a preliminary traffic study and have made a report. Their report showed no traffic signals are warranted in this area. The Planning Commission would make a recommendation if they felt a traffic study was crucial for this neighborhood. What we look at is would this piece of property, at its full impact, overwhelm the neighborhood and the information that we are receiving right now is that it would not with the improvements that would occur.

Alderman Lewis: There is another type of development in Hill Place that has opened up. Is there any information about the traffic related to that?

Jeremy Pate: I don't believe we have conducted any studies. There were improvements required of that development as well for the impact of that project. I don't know what the traffic numbers are looking like. I don't believe they are fully occupied so it would probably be best to wait until that project is fully occupied.

Alderman Thiel: I think we support more density in the south part of town. I continue to think there needs to be a zoning buffer such as a Neighborhood Conservation between the Downtown General zoning which is directly on South School and the National Cemetery property and the other cemetery that is located there. I am very sympathetic to the Bartholomew family however I believe the City has been very generous with variances for the sale barn over the years. This Council would not be denying them the right to sell their property by not supporting this rezoning. I think having a piece property rezoned to achieve the highest value is not a right. I do not think this project does well in this location.

Alderman Ferrell: The subject at hand is rezoning despite all the arguments that we have heard. The subject at hand is a down sizing zoning request. I can't recall the last time this Council turned down a down sizing in zoning for an I-1 to a Downtown General. I understand that the Regional National Cemetery Improvement Corporation has been and will continue to be in the process of buying lots that surround the National Cemetery and their real issue was not this sale barn issue.

Alderman Lucas: I don't think voting for this or voting against it is politically easy either way. I feel this is not compatible with the adjacent neighborhood. I think Downtown General would not be compatible, if we had a buffer it might be better. The reason I will not support this is it is not compatible. There has been public opposition, safety issues, and noise issues. The 2025 Plan did not mean destroying established neighborhoods in order to increase density. It is not meant to increase traffic safety and issues when we have inadequate safety issues and this clearly does.

Alderman Lewis: Although the Downtown General allows for mixed use I have a problem with the fact that it does not require mixed use. This is a large piece of property that would have a heavy impact on the surrounding land uses. I do not feel this is the right thing for that space at this time because of the traffic and surrounding neighborhood parcels. I think we can do better.

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

This ordinance Failed.

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting.*

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I gave the City Council a memo with a copy of amendments to the ordinance that was read at the last meeting. These amendments were basically cleanup measures to some extent..

Alderman Ferrell: I visited with some of the parties involved. There's a reasonable chance that we can come to some common ground on the basic components of the ordinances. I hope we can wait to vote on this until the next council meeting to give both parties time to digest.

Mayor Jordan: You want it to go the full three readings?

Alderman Ferrell: Yes.

Alderman Lucas moved to amend the ordinance as recommend by the City Attorney. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.

Alderman Petty: I was under the impression that the owners of the Red Dirt Farm and Rock Quarry were going to meet with the City Attorney to try and work out some solutions. Did that happen?

City Attorney Kit Williams: I had a meeting with the owner operators of the Stephens Red Dirt Farm and the Rogers Group which has the rock quarry. We discussed many items which I entailed in my memo to you.

Alderman Ferrell: When the public comment starts you might hear some language that might reinforce that idea.

Alderman Lewis: This has been an intense process for me. I researched the things the neighbors were saying. I definitely want to have every point of view from this. It is my intent to

find common ground and find a solution where the residents are finding some kind of peace of mind in their quality of life and their property value while also maintaining the integrity of the businesses that are surrounding our city.

Alderman Lucas: I agree with Sarah. She has done a lot of work on this. I thought it was important that our constituents contacted us. They felt like this was the only avenue they had.

Stephens Gills, Attorney representing Rogers Group: Some of you have spent a lot of time looking at this and hearing the concerns of the neighbors. We have reviewed the ordinance and have determined that several of the provisions there are unworkable in their current form. Rogers Group has several operating quarries in several states and has been in the quarry business for over 100 years. They are still in business because they comply with Federal, State, and local permits. They do everything they can to get along with their neighbors and operate in a reasonable manner so that it does not offend their neighbors. We respectfully disagreed with the City's position that it has jurisdiction to pass this regulation. Rogers Group would appreciate an opportunity to sit down with the staff and committee to explain what things do not work and see if we can come to some areas of compromise. There are some things we can agree to but other things that we can not agree to because it would force the closing of the quarry. That is not a reasonable outcome of this. We have permits that are all subject to inspection and have been inspected on a regular basis. We require the trucks to be covered.

Harry Phillips, 1683 Little Road, I am a neighbor to the quarry and have not been contacted about this. I make my living with a dump truck and if this passes it will destroy jobs. There is a way to control part of the noise. Why was I not contacted if all the other neighbors were contacted?

Alderman Lucas: The neighbors contacted us. We did not contact the neighbors.

Harry Phillips: I apologize. I understood that you had visited with all the neighbors.

Alderman Lucas: We went to their neighborhood meeting because they asked us to.

Harry Phillips: I was not invited to a neighborhood meeting. I was there before they were. I give them more respect than any car that goes down that road.

Alderman Lewis: This ordinance addresses rock quarry operations and the next ordinance addresses red dirt mining operations and that is it. Any other businesses this ordinance does not address.

Harry Phillips: So the noise that the trucks make when leaving the quarry is not the issue?

Alderman Lewis: If you are a contracted truck with that quarry and that quarry is within one mile of the city limits or in the city limits then that quarry will have certain hours or numbers on your truck that you will need to have.

Harry Phillips: By me using the quarry and buying material from the quarry then I am part of that noise is that right?

City Attorney Kit Williams: The rock quarry operator is being regulated. We will require in this ordinance, if it is passed as currently written, that the rock quarry operator will require that your truck be covered if you have more than half a load of rock. It also requires that they not load a truck unless there is an identifying number on the truck. Right now that is the only thing that could affect you as a driver as well as hours and days of operation.

Harry Phillips: My name is on the truck and it is under all DOT regulations.

City Attorney Kit Williams gave an example of why they are requiring a number on the trucks.

Harry Phillips: I work for myself and sometimes for the Rogers Group. I do not interfere with how you or the Mayor or anyone else feeds their family. It will create more trucks and more traffic if you reduce the hours.

Mayor Jordan: This will not pass tonight. There will be other opportunities for you to weigh in.

Chuck Nestrud, Attorney for Big Red Dirt Farm: We have some consultants that we would like you to listen to. I would like to emphasize that red dirt mining operations and quarries are not nuisances. The Arkansas Supreme Court has declared that quarries and blasting operations are not nuisances. The fact that this ordinance declares that there is a nuisance from these operations, if they are not conducted in a certain manner, is inconsistent with the case law in Arkansas. I think there are some severe jurisdictional problems with this. Your authority to regulate outside the city limits is limited to abatement of a nuisance. If you chose to regulate a nuisance there are diversions of authority between what you can do inside your City and what you can do outside your City. This ordinance makes a lot of assumptions that they are the same and your authority is the same and you regulate them both the same. I think there are some problems with that. Your authority within the city limits to deal with an annoyance is very broad and your authority outside the city limits to deal with a nuisance is very narrow.

We welcome the opportunity to meet and try to work through the issues, to try to come up with an ordinance that makes sense and regulates these entities properly. I appreciate your comments and that you are trying to create that balance. The Bid Red Dirt Farm has gone through the process with the County to establish a conditional use permit. These were established not with a nuisance in mind but with compatibility in mind. You are going into the County and regulating activities that the County has already decided what it thinks are appropriate to protect its area.

He explained some of the state regulations they deal with.

City Attorney Kit Williams: We established a City Board of Health in 2002.

William Sweetser, Big Red Dirt Farm, LLC: We are a very regulated industry by Federal, State, and County. We are in the County not the City. We were well outside the city limits and the City annexed out to us. We did not move our quarry to the City. We were not included in the writing of this ordinance. At no time have we been called by Ms. Lucas or Ms. Lewis nor have they visited our operation to listen, watch, learn, or ask questions. There are no public safety

issues. Hamestring Road is better today than ever before. We helped build Hamestring Road. We have a great business. We simply do not agree with the ordinance.

Al Johnson, Engineer with ImTech: We were called on in 2004 to look at the area to see if we felt we could properly permit that facility. He explained the permitting process and the water quality on the property. He also explained what they did to meet the County's conditional use permit.

Alderman Lewis: The changes you have worked with them on, what initiated that? This ordinance does not address a single operation. It is important to realize this includes all future operations.

Al Johnson: There are regulations and they are addressing the same thing your ordinance is looking at. They comply with these things every day. They are the most regulated industry there is.

Alderman Lewis: I appreciate all the things that you are reviewing. I think this ordinance is looking at a lot of those things but it is also geared towards specific activities that pose a nuisance and a danger, in some cases, to residents. Those are not always permitted by the EPA or the State.

Al Johnson: The quarry permit requires safety measures.

David Hershey, Big Red Dirt Farm Blasting Project Manager: I have managed a lot of projects in Fayetteville. He explained the different projects that he has worked on in Fayetteville. He stated the explosive industry is a very highly regulated industry. The regulations in the State of Arkansas are twice as restrictive as the regulations in the surrounding states. We were able to do these jobs in the Fayetteville area safely and without any damage to any of the personal properties or structures around these jobs. The regulations that we have now work. Chemical breakage of rock is much cheaper than mechanical breakage when it is done properly and safely by qualified people it is safer more efficient, faster, and makes the completion of the project quicker. The footprint that the overall project makes is smaller, the existing regulations that we have now works. If you pass regulations that are more restrictive then you will have to resort to mechanical breakage of rock through excavation which is cost prohibited. You will put the quarries out of business.

Alderman Lucas: When you do blasting for the quarries do they schedule it ahead of time?

David Hershey: Yes. We try to respond within about a week.
There was a discussion on the peak particle velocity.

There was also a discussion on chemical breakage versus mechanical breakage and the number of blasts per project.

Terri Davis Bouprer: I do not live that close to the quarry. She discussed the blasts that she has felt at her home. She asked if it was possible if this was a crummy place for a quarry geologically.

Ricky Bradley: I begin blasting 41 years ago. I have taught blasting. He discussed the Surface Mining Control and Reclamation Act. He gave his credentials and explained his teaching experience. He explained the blasting process.

Alderman Rhoads: What would you do differently in regards to the ordinance that we have before us?

Ricky Bradley: I understand the ordinance is curtailing the blasting to one time per month. You have to have so much rock or that quarry will not be effective. Instead of shooting once or twice a week they are now going to have to shoot all the rock at one time and this produces a much longer shoot which creates a lower frequency. When you have small shots these high frequency waves dissipate very rapidly.

Mayor Jordan: Can you narrow your discussion down?

Ricky Bradley: If we blast within the regulatory limits you are not going to do damage to structures, water wells, gas wells, or any infrastructure.

Alderman Ferrell: The larger blasts are going to be felt more than smaller lower powered blasts?

Ricky Bradley: Yes sir.

Dave Bolin: I live to the south of the Red Dirt Farm. The Red Dirt Farm came in 2004 after I had lived there for five years and no one notified me that they could come in and start digging red dirt and make a red dirt farm. These ordinances are all about safety. Before the Red Dirt pit was there it was peace and quite. I agree with the City ordinance and would like to see it passed.

Debbie Johnson: I support this ordinance. We just need a little relief. We have tried to be good neighbors. I have nothing against these dump truck drivers. I think the tagging of the dump trucks would help protect some of them. This is a safety issue. I would like to see not only dump trucks but every truck in the State that is hauling something needs to be tagged. This is a safety and a nuisance issue. The blasting noise has not bothered me as much as the constant noise of a rock crusher or the banging of a dump truck beds. We are just looking for a little bit of relief to be able to enjoy our homes and our properties.

Arthur McCandless: I have nothing against quarries but I do not want a quarry in my back yard. If we have to have it can we regulate it? I can go on and on as far as the safety part and the nuisance part.

John David Lindsey, owner of Stephens Red Dirt Farm: We became award of this ordinance about two weeks ago. We have 63 employees that are dump truck drivers or that operate equipment for us. The hours of operation will not work for us. We would be forced to raise our price double or close our business. You can not operate on a 32 hour week with rain days. We are open to establishing bus shelters for the kids. We helped pave that road. The road is much better than it was before.

David Hobel: I am self employed. What are the things that are a nuisance?

Alderman Lewis: The ordinance discusses dust, hours of operation, noise, and safety issues. She explained the ordinance and how the issues will be addressed.

David Hobel: I don't think you can tell me when I can work and when I can't.

Sandra Ward, 1048 North Hamestring spoke of the problem with gravel in her driveway. She voiced her concern about her children's safety.

William Henson: We have not had an accident in the five years I have been hauling out of the Red Dirt Farm to my knowledge. He voiced his concern about out of town trucks that might come into Fayetteville and not have numbers on them. The trucks are numbered and have a license tag on them. They are regulated by DOT. If this ordinance passes you are going to put a lot of small businesses out of business.

Alderman Ferrell: I sure hope that does not happen. I do not think there is any way we can treat trucks that come from another town or company outside of Fayetteville any differently.

William Henson: As far as the 8:30 am time to start if you are doing a job in Elkins Arkansas and you need red dirt and you can't load that truck until 8:30 in the morning those construction companies are not going to be able to start until 9:00 or 10:00.

Alderman Ferrell: I would hope that there is not anyone involved in this deal that wants to see anyone lose their livelihood. I remain optimistic and hopeful that at the end of the day we are going to be able to come out with something where people can still work and we can do it in a safe manner.

J.T Baker, Stephens Red Dirt Farm and Northwest Arkansas Truck Service: I think my biggest issue with the ordinance would be the hours of operation. For a week of work we try to set up 60 hours that week, which is what the DOT allows for us to have. We hope to get out of those 60 hours 40. If we get cut to 32.5 hours operating time we will be very fortunate if we can get 20 hours. The quarry is going to shut down and the dump truck drivers are not going to be able to afford to work for us. It is going to put companies out of business. Around 275 people will be affected. The cost of development in the City of Fayetteville is going to go through the roof. As you price material and equipment it is all relative to the hours that equipment can work and the production it can make. I called the ADEQ to see what we have in complaints. We have had five complaints in the last six years and 11 in the last month. What I think we can learn from that is that in preparation for these meetings people start calling and complaining even if they do not have something to complain about.

If safety for school kids is an issue why would be close on Saturday? Kids are not in school on Saturdays. What traffic study has been done? One of the things in the ordinance is the noise made by the equipment. If you are standing next to an excavator it is very loud. If it is inside the dirt pit and you are standing in Hamestring Road I doubt that you can tell when it is turned on. I would invite you to come to the dirt pit and see what is going on. We keep the road clean. I

think the hours of operation are going to inhibit the pits and the quarries and they are going to put us out of business. I would ask you to not pass the ordinance.

Alderman Lucas: Did you say 100 to 200 truck loads come out of your quarry a day?

J.T Baker: That is a fair average.

Alderman Lucas: I never dreamed that there were that many trucks.

J.T Baker: 200 to 300 trucks can come out of the quarry a day and you will not even know anything is going on.

Dana Gallagher: I live on Martin Road in Fayetteville: I came not as a paid expert. She talked about the research she had done on how limestone affects human beings and animals. She stated this is a safety and health concern.

Carolyn Hollingsworth, truck owner and driver: I am a mother and my number one safety is kids. We are safe drivers or we will not keep our jobs, licenses, or trucks. We pay an average of $1,200 per year for tags. You want to cut our hours back and we will be losing $300 a day. We pay any where from $1,000 to $6,000 a year to run the trucks. How are we going to pay for this if we can't make a living? You need to ride with us one day. Our lives are the quarries they make our living for us. I believe in the tarps on the trucks. We are a lot safer than the cars and pickups on the roads. I think the hours need to be left from 7:00 to 4:00.

Mary Jane Silva, Wedington Drive: It only takes one child to get hurt for it to be too many for me. We built our house before The Big Red Dirt Pit and the Rogers Group. They started trying to expand and it is complaint driven that is why there have been more calls recently. I appreciate this ordinance that you have put together.

Steve Walker, Double Springs: Cutting the hours will cause everyone to be on unemployment to make up the hours. This ordinance will take money out of everyone's pocket.

Anthony, a driver for Lindsey: It is frustrating for me to sit here and listen to this because I have yet to see kids on that road. He voiced his concern about the cut in hours.

Lanny Samples, Wedington Drive: I have been in the same location since 1975. Until the last year I have not had any problems with my house. I now have a crack in the ceiling in my garage. My front porch is cracked and has dropped down. The ground may not move but you can feel vibrations in your feet and our windows rattle. We have foundation and drywall damage. It has occurred within the last year since the blasting started.

He passed out picture that were taken while following a dump truck. He explained the pictures to the Council. He voiced his concern about the traffic the dirt mines are producing. I support the ordinance. The issue is safety and property values. I urge you to pass this.

Roma Gray: I am a neighbor of the quarry and it really is a nuisance. It is creating a hardship on those of us that live around there. I hope you will consider passing this ordinance.

Don Johnson: I live on West 16 south of the dirt farm. I am for this ordinance. One thing that bothers me is responsibility. We do not want to have anyone unemployed. If you can't get material from one place you are going to find material some place else. We are not asking them to go out of business we are just asking them not to do it in our back yard. We our not making this stuff up our houses are actually cracking. We were under the impression that when they played the red dirt out, there were going to be apartments there. I hope that you pass this ordinance.

Jeff Silva: I live south of the gravel pits. I appreciate the efforts for this ordinance. It is a very bold move. The noise is a big problem and I see that as a nuisance and the blasting. I appreciate your efforts.

Michael Luna: I live in that area. I want to thank you for bringing this up and considering it. I voice my support for the ordinance.

Hugh Jarrett, attorney for Stephens Red Dirt Farm: The hours of operation are going to bankrupt the companies. You are talking about hundreds of people whose livelihood is going to go away. You are going to bankrupt my boss and a couple of other big companies but you are also affecting an extreme amount of normal working people. The ordinance you are proposing to pass needs to be related to abating the nuisance. We can get our trucks to stay at a slow speed. I think there is some common sense solutions that are not going to force us into a corner by taking the complete value out of that piece of property.

Alderman Thiel: I hope the representatives from the businesses can get with the City Attorney and determine a way that this can be presented to the Council as a way of mediating this prior to the next meeting.

Hugh Jarrett: We are available any time. On the hours of operation I do not think there is much room to negotiate there. We will work with reasonable safety accommodations but the hours of operation are basically putting us of business.

Alderman Thiel: How long have both of these businesses been in business?

Hugh Jarrett: I think since the mid 1990's

Brad Johnson, co-owner Big Red Dirt Farm: We have been in business since 2004. Larry Stephens told me he started his business in 1993 and started blasting in 1997. Luttrell told me he started his business 25 years ago.

Alderman Thiel: Luttrell was the original red dirt business?

Brad Johnson: Yes.

Alderman Gray: Do we know when they operate or does it depend a lot on the rain.

City Attorney Kit Williams: There was a conditional use for the Big Red Dirt Farm and their hours were from 7:00 to 6:00 five days a week. That covers mainly the blasting and not the red

dirt farming. When the Rogers Group was attempting to enlarge their quarry they had a large scale development and had the same sort of hours plus they were open 7:00 to 12:00 on Saturday but that was sales only. But the large scale development was turned down by the County so that did not go into effect. That was what was being proposed. The conditional use has actually been approved by the County for the red dirt farm that is now being appealed by the neighbors.

Alderman Petty: It seems to me everyone needs to get together and have a good brain storming session. To the owners of the businesses if you need to make an amendment there are multiple ways for you to present your case in an official way so that we can change some of these things.

Alderman Ferrell: I think it is a good idea but I would like to hear a little clarity on this. What is the best vehicle for getting together with the principals?

City Attorney Kit Williams: I would suggest that they get with me early and then have an Ordinance Review Committee meeting after that. We have to keep in mind when it comes to explosions and explosive power that is already fully regulated by the State and Federal government. So even though it might be distressing to the neighbors I don't think there is anything the City can do in relation to the explosive blast. I think we can limit the number but not the size or anything like that.

This ordinance was left on the Second Reading.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting.*

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to amend the ordinance as recommend by the City Attorney. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

This ordinance was left on the Second Reading.

New Business:

ECO Vista Waste Management Landfill: An ordinance waiving the requirements of formal competitive bidding and accepting an interim rate quote from Waste Management for the disposal of solid waste; approving a budget adjustment; and declaring an emergency.

City Attorney Kit Williams read the ordinance.

David Jurgens, Utilities Director: The Cherokee Nation has stated that they will no longer provide services for solid waste effective September 30, 2009. This is a temporary solution that the staff has put together for how to take care of our solid waste business for October and November. The long term solution will involve a bid opening for transport and disposal of our solid waste.

Alderman Ferrell: We are still going to pursue our legal purgatives.

Mayor Jordan: Absolutely.

Alderman Lucas: The way I understand it they just quit accepting it and they had been paying us to have it shipped to Russellville and now they are going to quit all together?

David Jurgens: That had to do with the biosolids about a year ago. This is actually where they have given us 30 days notice. Cherokee Nation operates our transfer station, scale, and haul and dispose of our trash.

Alderman Rhoads: Does this ordinance have anything to do with any legal action we might take in regard to the Cherokee Nation?

City Attorney Kit Williams: It would be relevant for damages possibly.

Alderman Rhoads: I will recuse myself.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance 7-0. Alderman Rhoads recused.

Alderman Cook moved to approve an Emergency Clause. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Ordinance 5272 as Recorded in the office of the City Clerk.

Solid Waste Transfer Station Employee: A resolution authorizing the addition of one (1) full-time employee in the Solid Waste & Recycling Division to move operations in-house for the Solid Waste Transfer Station and scale house; and approving a budget adjustment in the amount of $50,000.00.

David Jurgens: This is part of the long term solution where we would bring the operation of the transfer station and scale house in house and do it ourselves from now on.

Alderman Cook moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads recused.

Resolution 202-09 as recorded in the office of the City Clerk.

RZN 09-3398 (Schaffer): An ordinance rezoning that property described in rezoning petition RZN 09-3398, for approximately 0.17 acres, located at 528 North College Avenue from C-2, Thoroughfare Commercial, to DG Downtown General.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the ordinance. This is a down zoning to Downtown General. Staff is supportive and the Planning Commission voted 9-0 in favor of this request.

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

City Attorney Kit Williams read the ordinance.

Mayor Jordan: Are you all from Ward 2 okay with this?

Alderman Cook: It's all good.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5273 as Recorded in the office of the City Clerk.

RZN 09-3394 (Box): An ordinance rezoning that property described in rezoning petition RZN 09-3394, for approximately 1 acre, located at 2013, 2025, 2037 and 2049 Box Avenue from RSF-4, residential single-family, 4 units per acre, to RMF-6, residential multi-family, 6 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of this ordinance. He stated Planning Commission voted 9-0 in favor and staff recommended approval as well.

Alderman Lucas: When you build something like that and you are going to build it to have two separate homes don't you have to have different building material in between?

Jeremy Pate: There can be. A fire wall for instance is required in instances when you have a property line and that is something our building officials would look at. We always advise the applicant to contact our Building Safety office before they go through that process.

Alderman Lucas: It was built that way?

Jeremy Pate: It was either built that way or there can be amendments made to the structure to accommodate that.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This is splitting lots are there anymore improvements on the streets that are going to have to be done?

Jeremy Pate: I believe the improvements were required when the conditional use permits came through to include curb, gutter, and sidewalk.

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

Ordinance 5274 as Recorded in the office of the City Clerk.

VAC 09-3397 (University of Arkansas): An ordinance approving VAC 09-3397 submitted by University of Arkansas for property located at 10 North Garland to vacate approximately 5,663 square feet of existing utility easement on the subject property.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of this item.

Jay Young, Development Consulting Inc., representative for the University stated he would be happy to address any comments.

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: How much is that in acreage approximately?

Jeremy Pate: Point 13 acres.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5275 as Recorded in the office of the City Clerk.

VAC 09-3399 (Harris): An ordinance approving VAC 09-3399 submitted by Bates and Associates for property located at 303 South West Avenue to vacate a portion of the West Avenue right-of-way and an unconstructed 30' street right-of-way on the subject property.
City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief summary of the ordinance. Staff and Planning Commission are recommending in favor of this application.

Alderman Thiel: This also went through the Street Committee and we recommended it.

Alderman Lucas: The 30 foot right of way for a street where was it going to go?

Jeremy Pate: It was part of access for the railroad. They had right of way on both sides of the railroad right of way. We have found that all throughout the City along this section. I'm assuming it was for a frontage or access to work on the railroad but it was never utilized.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5276 as Recorded in the office of the City Clerk.

ADM 09-3423 (S. West Avenue Master Street Plan Amendment): A resolution amending the Master Street Plan, reclassifying S. West Avenue, between W. South Street and W. Prairie Street, from a 45 foot right-of-way to a 40 foot right-of-way, as described and depicted in the attached map.

Jeremy Pate gave a brief description of this resolution.

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

Resolution 203-09 as recorded in the office of the City Clerk.

Agenda Additions: Added before Unfinished Business

Meeting adjourned at 11:00 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

TELECOMMUNICATIONS BOARD
CABLE FRANCHISE RECOMMENDATIONS
TO THE CITY COUNCIL & CITY ADMINISTRATION
August 20, 2009

In late 2005 the City Council did not approve the franchise agreement presented to them. The Cox Cable Franchise was written in 1989 and expired on November 2001, has been in effect on a year to year basis since then with no changes. The Telecommunications Board recommends that the Cable Franchise negotiations be resumed with following points:

1. That, at a minimum, the number of PEG channels available to the City be increased to four, in order for the Fayetteville Public Schools and The University of Arkansas to have separate channels.

2. That a review and assessment of the current Cable Franchising Law and Climate be made, particularly in regard to whether or not the "Formal" Franchise negotiating process is still a viable process.

3. That if the review and assessment indicates that the "Formal" Franchise negotiating process is viable, a new "Needs and Interests" survey be conducted and compiled. This will essentially be an update to the survey completed in 1999.

4. Consider obtaining the services of a firm specializing in Cable Franchise Negotiations.

5. Proceed to negotiate a Franchise Renewal based on an up-to-date "Needs and Interests" survey if the "Formal" process is viable. If the "Formal" process is not viable, proceed, preferably guided by a firm specializing in Cable Franchise Negotiations, in the most advantageous manner available.

Approved by the Telecommunications Board, August 20, 2009

Sept. 2, 2009

Aubrey J. Shepherd, Telecommunications Board Chairman

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Dennis Pratt / Barbara Olsen	Fleet Operations	Transportation
Submitted By	**Division**	**Department**

Action Required:

A resolution awarding Bid 09-54 to Frost Oil Company of Fayetteville, AR and approval of an annual contract to supply engine oil and lubricants for the Fleet Operations Division.

$ 58,363.00	$ 3,060,068.00	Materials and Supplies
Cost of this request	Category / Project Budget	Program Category / Project Name
9700.1910.5214.00	$ 1,059,968.00	Fleet Operations Vehicle Mntc
Account Number	Funds Used to Date	Program / Project Category Name
	$ 2,000,100.00	Shop Fund
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] **Budget Adjustment Attached** [ ]

Department Director — Date: 9-10-09

City Attorney — Date: 9/11/09

Finance and Internal Services Director — Date: 9-11-2009

Chief of Staff — Date: 9-14-09

Mayor — Date:

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED 9-10-09 KG

Received in Mayor's Office — ENTERED 9/11/09

Comments:

Revised January 15, 2009

Fayetteville
ARKANSAS

FLEET OPERATIONS
1525 S. Happy Hollow Road
Fayetteville, AR 72701
(479) 444-3495 FAX (479) 444-3425

100 BEST FLEETS

t Oil Company

Interdepartmental Correspondence

TO: MAYOR/CITY COUNCIL

THRU: TERRY GULLEY, DIRECTOR OF TRANSPORTATION

FROM: DENNIS PRATT, FLEET OPERATIONS SUPT.

DATE: SEPTEMBER 9, 2009

SUBJECT: Award Bid 09-54 for Oil & Lubricant Contract

RECOMMENDATION: That City Council award Bid 09-54 to Frost Oil Company of Fayetteville, AR and approve a contract to supply engine oil and lubricants for the Fleet Operations Division.

BACKGROUND: Bid 09-54 was opened on August 25, 2009 for an annual contract for Engine Oil and Lubricants as required by the Fleet Operations Division. The contract is for a period of one year with the option to renew for three additional one year periods. The contractor will supply bulk storage and dispensing equipment. Five Bid responses were received. A detailed tabulation sheet is attached.

The lowest bid from Frost Oil Company calls for a gasoline engine oil with which Fleet has no experience. The second lowest bid, also from Frost Oil, calls for an engine oil brand with which Fleet is very familiar as we have a long history of use of that product. For the small difference in price, it is not deemed worth risking engine damage. This second lowest bid meets all specifications.

I recommend award of a contract to Frost Oil Company of Fayetteville. The bid amount for estimated annual quantities is $58,363.06.

Funds are available for this purchase in 9700.1910.5214.00, line item for Parts, Oil, and Accessories in the Materials & Supplies category.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #09-54 AND APPROVING A CONTRACT WITH FROST OIL COMPANY IN THE ESTIMATED ANNUAL AMOUNT OF $58,363.06 TO SUPPLY ENGINE OIL AND LUBRICANTS TO THE FLEET OPERATIONS DIVISION.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #09-54 and approves a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division. A copy of the contract, marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

BID: 09-54
DATE: 8/25/09
3:00 PM
CITY OF FAYETTEVILLE

Fayetteville ARKANSAS

Bid 09-54, Oil and Lubricants

Item #	Description	Estimated Quantity	Anderson's Gas & Propane - OPT 1		Anderson's Gas & Propane - OPT 2		B & M Oil Company, Inc.		Frost Oil Company - OPT 1		Frost Oil Company - OPT 2	
			UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Gasoline service engine oil, API service class SM-GF-4 SAE grade 5W-30	1,000 BULK DELIVERY	$8.45 Price per gallon	$8,450.00	$5.00 Price per gallon	$5,000.00	$6.16 Price per gallon	$6,160.00	$7.67 Price per gallon	$7,670.00	$6.54 Price per gallon	$6,540.00
		240 QUART CONTAINER	$1.91 Price per quart	$458.40	$1.91 Price per quart	$458.40	$2.78 Price per quart	$667.20	$2.49 Price per quart	$597.60	$1.81 Price per quart	$434.40
	BRAND / GRADE NAME		Cross Oil	Bulk - Gard / Qts - Extreme	Cross Oil	Bulk - Gard / Qts - Extreme	Fina	Ultra Supreme 5W30	Chevron	Supreme 5W 30	Coastal	GF-4 5W 30
2	Diesel service engine oil, API service class Cj4, SAE grade 15W-40	2,000 BULK DELIVERY	$9.95 Price per gallon	$19,900.00	$6.50 Price per gallon	$13,000.00	$7.77 Price per gallon	$15,540.00	$6.78 Price per gallon	$13,560.00	$6.78 Price per gallon	$13,560.00
		480 QUART CONTAINER	$2.18 Price per quart	$1,046.40	$2.18 Price per quart	$1,046.40	$3.02 Price per quart	$1,449.60	$2.70 Price per quart	$1,296.00	$2.70 Price per quart	$1,296.00
	BRAND / GRADE NAME		Cross Oil	Syngard	Cross Oil	Syngard	Mobil	Bulk - Fleet 15W40 / Qts Deluac 1300 15W40	Citgo	C-600 15W 40	Citgo	C-600 15W 40
3	AW Hydraulic oil, ISO Grade 68 AW	1,200 BULK DELIVERY	$6.40 Price per gallon	$7,680.00	$4.16 Price per gallon	$4,992.00	$4.65 Price per gallon	$5,580.00	$4.89 Price per gallon	$5,868.00	$4.89 Price per gallon	$5,868.00
		50 5 GAL. CONTAINER	$7.40 Price per gallon	$370.00	$5.16 Price per gallon	$258.00	$6.11 Price per gallon	$305.50	$5.94 Price per gallon	$297.00	$5.94 Price per gallon	$297.00
	BRAND / GRADE NAME		Cross Oil	Extreme	Cross Oil	Extreme	Tru South	AW Hydraulic 68	Conoco	AW Hyd. 68	Conoco	AW Hyd. 68
4	Tractor Hydraulic Fluid	550 55 GALLON DRUM	$7.09 Price per gallon	$3,899.50	$5.00 Price per gallon	$2,750.00	$8.48 Price per gallon	$4,664.00	$4.96 Price per gallon	$2,728.00	$4.96 Price per gallon	$2,728.00
		60 5 GAL. CONTAINER	$8.59 Price per gallon	$515.40	$6.50 Price per gallon	$390.00	$9.39 Price per gallon	$563.40	$6.36 Price per gallon	$381.60	$6.36 Price per gallon	$381.60
	BRAND / GRADE NAME		Cross Oil	Gard	Cross Oil	Gard	Mobil	Mobilfluid 424	Coastal	Multi-Trac THF	Coastal	Multi-Trac THF
5	Automatic Transmission Fluid - MERCON V	100 55 GALLON DRUM	$21.96 Price per gal. - Mercon V	$2,196.00	$11.98 Price per gal. - Mercon V	$1,198.00	$15.38 Price per gal. - Mercon V	$1,538.00	$7.90 Price per gal. - Mercon V	$790.00	$7.90 Price per gal. - Mercon V	$790.00
		100 55 GALLON DRUM	$41.30 Price per gal. - Transynd	$4,130.00	$31.32 Price per gal. - Transynd	$3,132.00	$30.89 Price per gal. - Transynd	$3,089.00	$29.50 Price per gal. - Transynd	$2,950.00	$29.50 Price per gal. - Transynd	$2,950.00
		20 5 GAL. CONTAINER	$22.96 Price per gallon	$459.20	$12.98 Price per gallon	$259.60	N/A Price per gallon	N/A	$8.06 Price per gallon	$161.20	$8.06 Price per gallon	$161.20
		20 5 GAL. CONTAINER	$43.22 Price per gallon	$864.40	$33.24 Price per gallon	$664.80	$32.09 Price per gallon	$641.80	$32.67 Price per gallon	$653.40	$32.67 Price per gallon	$653.40
		120 QUART CONTAINER	$3.28 Price per quart	$393.60	$3.28 Price per quart	$393.60	$4.45 Price per quart	$534.00	$2.59 Price per quart	$310.80	$2.59 Price per quart	$310.80
		120 QUART CONTAINER	$8.94 Price per quart	$1,072.80	$8.94 Price per quart	$1,072.80	$8.05 Price per quart	$966.00	N/A Price per quart	N/A	N/A Price per quart	N/A
	BRAND / GRADE NAME		BP - Transynd / Cross Oil - ATF	Autran Syn 295 Syngard	BP Cross Oil	Autran Syn 295 Syngard	Mercon V - Valvoline / TransSynd - Mobil	Maxlife ATF / Deluac Synthetic ATF	Coastal / BP	Multi-Vehicle Syn. Blend ATF / Autran-295	Coastal / BP	Multi-Vehicle Syn. Blend ATF / Autotran-295

6	Multi-purpose Gear Lubricant - Grade 75W-90 Synthetic For Auto and Large Truck Differentials	240 55 GALLON DRUM	$27.23 Price per gallon	$6,535.20	$15.17 Price per gallon	$3,640.80	$23.44 Price per gallon	$5,625.60	$23.31 Price per gallon	$5,594.40	$23.31 Price per gallon	$5,594.40
		150 5 GAL. CONTAINER	$32.17 Price per gallon	$4,825.50	$20.11 Price per gallon	$3,016.50	$27.20 Price per gallon	$4,080.00	$24.05 Price per gallon	$3,607.50	$24.05 Price per gallon	$3,607.50
	BRAND / GRADE NAME		Cross Oil	Syngard	Cross Oil	Syngard	Mobil	Deluac Synthetic 75W90	Conoco	Triton Syn. 75/90	Conoco	Triton Syn. 75/90
7	Multi-purpose Grease - Lithium EP #2	240 120 POUND DRUM	$2.14 Price per pound	$513.60	$2.14 Price per pound	$513.60	$2.10 Price per pound	$504.00	$2.124 Price per pound	$509.76	$2.124 Price per pound	$509.76
		75 5 GAL. CONTAINER	$2.16 Price per pound	$162.00	$2.16 Price per pound	$162.00	$2.16 Price per pound	$162.00	$2.136 Price per pound	$160.20	$2.136 Price per pound	$160.20
		240 1 POUND CARTRIDGE	$2.06 Price each	$494.40	$2.06 Price each	$494.40	$2.04 Price each	$489.60	$2.16 Price each	$518.40	$2.16 Price each	$518.40
	BRAND / GRADE NAME		Cross Oil	Extreme	Cross Oil	Extreme	Mobil	Mobilgrease HTS	Mystik	JT-6 High Temp #2	Mystik	JT-6 High Temp #2
8	Miscellaneous Services	ENGINE OIL SAMPLE ANALYSIS 700	$0.00	$0.00	$10.85	$7,595.00	$12.95	$9,065.00	$0.00	$0.00	$0.00	$0.00
		AUTOMATIC TRANSMISSION OIL SAMPLE ANALYSIS 200	$0.00	$0.00	$10.85	$2,170.00	$12.95	$2,590.00	$8.10	$1,620.00	$8.10	$1,620.00
		HYDRAULIC OIL SAMPLE ANALYSIS 200	$0.00	$0.00	$10.85	$2,170.00	$12.95	$2,590.00	$8.10	$1,620.00	$8.10	$1,620.00
		DIFFERENTIAL SAMPLE ANALYSIS 400	$0.00	$0.00	$10.85	$4,340.00	$12.95	$5,180.00	$8.10	$3,240.00	$8.10	$3,240.00
		COOLANT SAMPLES 300	$0.00	$0.00	$16.75	$5,025.00	$35.75	$10,725.00	$14.10	$4,230.00	$14.10	$4,230.00
	TOTAL BID PRICE:		$63,966.40		$63,742.90		$82,709.70		$58,363.86		$57,070.66	
9	Other Charges	55 GALLON DRUM DEPOSIT (REFUNDABLE) 30	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
		OPTION TO PURCHASE DISPENSING EQUIPMENT 1	$3,985.00	$3,985.00	$3,985.00	$3,985.00	See Chart Below		$4,650.00	$4,650.00	$4,650.00	$4,650.00

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

B & M Oil Company, Inc.	
Item 9, Line 3	
Year 1	$7,000.00
Year 2	$7,000.00
Year 3	$5,000.00
Year 4	$3,000.00
Year 5	$1,000.00

CERTIFIED: A. FOREN, PURCH AGENT

WITNESS

09/02/09
DATE

OPTION 1

Fayetteville
ARKANSAS

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220
TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: BID 09-54, Oil and Lubricants
DEADLINE: ***Tuesday, August 25, 2009 at 3:00 PM***, Central Standard Time
DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701
PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220
DATE OF ISSUE AND ADVERTISEMENT: Thursday, August 06, 2009

INVITATION TO BID
BID 09-54, Oil and Lubricants

No late bids will be accepted. Bids shall be submitted in sealed envelopes labeled "Bid 09-54, Oil and Lubricants" with the name and address of the bidder.

All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Frost Oil Company - OPT 1
Contact Person: Dwight Mitchell Title: Branch Manager
E-Mail: dwight.mitchell@frostoil.com Phone: 479-521-5200
Business Address: 731 S. Razorback Rd.
City: Fayetteville State: AR Zip: 72701
Signature: [signature] Date: 8-24-09

Estimated installation will take approx. 10 days or the time it may take for the overhead reels to be shipped in.

City of Fayetteville
Bid 09-54, Oil and Lubricants
Bid Form – *REVISED PER ADDENDUM 1*

THIS INVITATION TO BID IS BASED ON THE NEED FOR AN ANNUAL CONTRACT FOR LUBRICATING OILS AND HYDRAULIC OILS, AS LISTED IN SPECIFICATIONS ATTACHED. HOWEVER, THE CITY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS, WAIVE FORMALITIES IN THE BIDDING, AND MAKE A BID AWARD DEEMED TO BE IN THE BEST INTEREST OF THE CITY. These quantities are best faith estimates and not exact.

F.O.B. Fleet Operations Division, Fayetteville, AR 72701

ITEM:	DESCRIPTION:	QUANTITY:	*UNIT PRICE:	*TOTAL PRICE
1.	Gasoline service engine oil, API service class SM–GF-4 SAE grade 5W-30			
	BULK DELIVERY – Price per gallon	1,000	$ 7.67	$ 7,670.00
	QUART CONTAINER – Price per quart	240	$ 2.49	$ 597.60

Please Specify:

BRAND: Chevron **GRADE NAME:** Supreme 5W 30

2.	Diesel service engine oil, API service class Cj4, SAE grade 15W-40			
	BULK DELIVERY – Price per gallon	2,000	$ 6.78	$ 13,560.00
	QUART CONTAINER – Price per quart	480	$ 2.70	$ 1,296.00

Please Specify:

BRAND: Citgo **GRADE NAME:** C-600 15W 40

3.	AW Hydraulic oil, ISO Grade 68 AW			
	BULK DELIVERY – Price per gallon	1,200	$ 4.89	$ 5,868.00
	5 GAL. CONTAINER – Price per gallon	50	$ 5.94	$ 297.00

Please Specify:

BRAND: Conoco **GRADE NAME:** AW Hyd. 68

4.	Tractor Hydraulic Fluid			
	55 GALLON DRUM – Price per gallon	550	$ 4.96	$ 2,728.00
	5 GAL. CONTAINER – Price per gallon	60	$ 6.36	$ 381.60

Please Specify:

BRAND: Coastal **GRADE NAME:** Multi-Trac THF

5. Automatic Transmission Fluid – MERCON V

Automatic Transmission Fluid -TransSynd or Allison Approved Equal

* 55 GALLON DRUM – Price per gallon Mercon V	100	$ 7.90	$ 790.00
55 Gallon Drum - Price per Gallon Transynd	100	$ 29.50	$ 2950.00
* 5 GAL. CONTAINER - Price per gallon	20	$ 8.06	$ 161.20
5 Gal. Container - Price per Gallon	20	$ 32.67	$ 653.40
* QUART CONTAINER - Price per quart	120	$ 2.59	$ 310.80
Quart Container - Price per quart	120	$ N/A IN QTS.	$ N/A

Please Specify: * Coastal Multi-Vehicle Syn. Blend ATF

BRAND: BP **GRADE NAME:** Autran-295

6. Multi-purpose Gear Lubricant – Grade 75W-90 Synthetic For Auto and Large Truck Differentials

55 Gallon DRUM – Price per gal	240	$ 23.31	$ 5,594.40
5 Gallon CONTAINER – Price per gal	150	$ 24.05	$ 3,607.50

Please Specify:

BRAND: Conoco **GRADE NAME:** TRITON SYN. 75/90

7. Multi-Purpose Grease – Lithium EP #2

120 POUND DRUM – Price per pound	240	$ 2.124	$ 509.76
5 GAL. CONTAINER – Price per pound	75	$ 2.136	$ 160.20
1 POUND CARTRIDGE – Price Each	240	$ 2.16	$ 518.40

Please Specify:

BRAND: Mystik **GRADE NAME:** JT-6 HIGH TEMP #2

ITEM:	DESCRIPTION:	QUANTITY:	*UNIT PRICE:	*TOTAL PRICE
8.	Miscellaneous Services (must be provided)			
	Engine Oil Sample Analysis	700	$ Ø	$ Ø
	Automatic Transmission Oil Sample Analysis	200	$ 8.10	$ 1620.00
	Hydraulic Oil Sample Analysis	200	$ 8.10	$ 1620.00
	Differential Sample Analysis	400	$ 8.10	$ 3,240.00
	Coolant Samples	300	$ 14.10	$ 4,230.00

Samples must come pre/paid and be able to be tracked using a web site based program with graphs on current and past samples. Notification of problem samples must be e/mailed or faxed to the City. Infra- Red testing to determine the condition of the oil additive package, ICP analysis to determine part wear rates and component conditions, Physical and chemical testing to measure water and fuel dilution, carbon build up ,silica dirt ,soot levels and measure viscosity these test must be made and measured.

TOTAL BID PRICE: $ 58,363.06

9.	Other Charges		
	55 Gallon Drum Deposit (Refundable)	30	$ Ø
	Option to purchase dispensing equipment Par. 2.5	1	$ 4,650.00

Items 1 through 9 will be awarded to a single vendor – all or none.

Please total extended quantity prices of items 1 through 8 to determine "Total Bid Price" for purposes of calculating lowest responsive bid. Listed quantities are estimates and not a guaranteed minimum purchase.

Bids must be submitted on this bid form in its entirety AND accompanied by descriptive literature on the products being bid.

THIS FORM CONTINUES ON THE NEXT PAGE. . .

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

Upon signing this Bid, the bidder certifies that:

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

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

***NAME OF FIRM:** Frost Oil Company
Purchase Order/Payments shall be issued to this name

***BUSINESS ADDRESS:** 731 S. Razorback Rd.

***CITY:** Fayetteville ***STATE:** AR ***ZIP:** 72701

***PHONE:** 479-521-5200 **FAX:** 479-442-4663

***E-MAIL:** dwight.mitchell@frostoil.com

***BY: (PRINTED NAME)** Dwight Mitchell

***AUTHORIZED SIGNATURE:** [signature]

***TITLE:** Branch Manager

City of Fayetteville
Bid 09-54, Oil and Lubricants
Detailed Specifications – Oil and Lubricants

1. GENERAL -

1.1 All product(s) bid must meet or exceed the minimum requirements or they will be deemed incomplete and will not be considered for bid award.
1.2 All specifications written are to *minimums*, unless otherwise noted.
1.3 Vendor must state brand name for all items listed on the pricing sheets. Vendor shall not substitute a different brand or grade without prior authorization from the City.
1.4 All products delivered must be sealed and bear trademark of manufacturer. Vendor must be a licensed re-packager for bulk and repackaged products.
1.5 All bulk delivery trucks must have Weights and Measures certified meters. Copies of current certificates must be provided.
1.6 The City staff shall be the sole judge of the sufficiency of quality of material. Vendor warrants, represents, and assures that the products and services to be provided shall conform in all respects to the requirements of the specifications and as designed will meet the functional and performance standards contained herein and will meet or exceed the representations contained in this bid.
1.7 Contract shall be for a term of one year from date of award. Contract may be extended for four additional one year terms upon mutual agreement of the City and the vendor.
1.8 Prices may be adjusted up or down upon presentation of documented price change from the lubricant manufacture applicable to all commercial users. Adjustment shall not exceed actual cost change to the vendor. Adjustments shall be limited to two changes and a maximum of five percent in any contract year.
1.9 Quantities listed are approximate anticipated annual requirements based on prior purchases. The City agrees to purchase its requirements of the listed products solely from the successful bidder, however no minimum purchase quantity is guaranteed.
1.10 Vendor agrees to sell products required for specific applications not listed in this bid from the same manufacturer at the same cost factor from published price lists.
1.11 The City reserves the right to secure from another source if needed product cannot be delivered within the specified time.
1.12 The City reserves the right to procure from other sources packaged oil and lubricant products not listed in this bid solicitation as deemed necessary to meet the needs of the City and for testing purposes.

2. DELIVERY, STORAGE AND DISPENSING EQUIPMENT

2.1 Products ordered under this contract shall be delivered F. O. B. to the Fleet Operations shop facility within 24 hours of receipt of order.

2.2 Vendor will furnish the following bulk storage and dispensing equipment at no charge to the City for the duration of the contract.
a. ✓ Three 250 gallon minimum ob-round storage tanks with floor stands
b. ✓ Three Balcrank 1130-005 or approved equal air operated pumps
c. ✓ Three Balcrank 2120-013 hose reel or approved equal
d. ✓ Two Balcrank 3331-001 60 quart preset meter or approved equal (15W40 lube oil and AW hydraulic oil)

e. ✓ One Balcrank 3330-082 metered control handle (5W30 lube oil)
f. ✓ Necessary filters, regulators, fittings and installation hardware.

2.3 Vendor will assemble dispensing equipment on site and provide necessary maintenance for the duration of the contract. The City will specify location of tanks and equipment provide one air line connection to the equipment, mount hose reels overhead and provide plumbing between oil pumps and hose reels.

2.4 Upon termination of contract, either by expiration of term, or by cancellation by either party for failure to perform or other reason, the City shall have the right to maintain possession of equipment until inventory is exhausted at normal rate of consumption.

2.5 Upon expiration of the third year contract renewal (fourth year of contract), the City will be granted the option to purchase above equipment at the price stated in Item 9.

3. *ITEM 1 – GASOLINE SERVICE ENGINE OIL*

3.1 SAE Grade 5W-30:GF4
a. ✓ API service class ~~SL~~ SM
b. ✓ Motorcraft, Valvoline, Citgo Supergard, or approved equal
c. ✓ OEM approved for Ford, GM, Chrysler, Honda gasoline engines through current year model.

4. *ITEM 2 – DIESEL SERVICE ENGINE OIL*

4.1 SAE Grade 15W-40:
a. ✓ API service class Cj-4,
b. ✓ Shell Rotella T, Citgo Citgard 600, or approved equal
c. ✓ OEM approved for Ford, GM, Navistar, Mack, Cummins, Detroit, Caterpillar, John Deere, New Holland, Komatsu, Mercedes diesel engines through current year model.

4.2 OIL ANALYSIS PROGRAM:
a. ✓ Vendor shall provide engine oil sample analysis at no charge
b. ✓ Sample supplies and shipping shall be provided
c. ✓ Sample results shall be available via computer within 5 days of receipt by lab.
d. ✓ Oil analysis history, trend data, and management reports shall be available via computer for each unit in the City's fleet.
e. ✓ Sample analysis for non engine components shall be provided. Any additional cost shall be listed in Page 3, Item 8 and be included in the total bid price.

5. *ITEM 3 – ANTI-WEAR HYDRAULIC OIL*

5.1 ISO Grade 68 AW
a. ✓ Citgo A/W 68 or approved equal
b. ✓ Viscosity index minimum 95
c. ✓ Must meet Vickers M-2950-S, M-286-S; Denison HF- O.
d. ✓ OEM approved for hydraulic equipment within the City's fleet including LaBrie, Leach, Heil, Bandit, Schwarze, Vickers, Parker (Commercial), and Dennison

pumps.

6. ***ITEM 4 – TRACTOR HYDRAULIC FLUID***

6.1 Multifunction tractor hydraulic/transmission fluid:

a. ✓ Citgo Transgard Tractor Hydraulic Fluid; John Deere Quatrol, J20C; Ford NH M2C134D or approved equal

b. ✓ OEM approved for construction equipment and farm tractors manufactured by Case, Caterpillar, Ford, New Holland, John Deere, Komatsu, Kubota.

7. ***ITEM 5 – AUTOMATIC TRANSMISSION FLUID***

7.1 Extended life automotive automatic transmission fluid:

a. ✓ Transynd or approved equal for New World and Allison product line.

b. ✓ OEM approved for Ford MERCON, MERCON V, General Motors DEXRON III

8. ***ITEM 6 – MULTI-PURPOSE GEAR LUBRICANT***

8.1 Grade 75W-90

a. ✓ Synthetic

b. ✓ OEM approved for Ford, General Motors, Mack, Navistar International, Sterling, Caterpillar, Komatsu, Ford New Holland, and other major equipment represented in the City fleet.

9. ***ITEM 7– MULTI-PURPOSE GREASE***

9.1 High Temp Lithium EP #2:

a. ✓ MYSTIK JT-6 High Temp Grease or approved equal

b. ✓ OEM approved for Ford, General Motors, Mack, Navistar International, Sterling, Caterpillar, Komatsu, Ford New Holland, and other major equipment represented in the City fleet.

10. ***WARRANTY***

10.1 Vendor and product manufacturer shall warrant products to be suitable for use as specified within the City fleet and be financially responsible for any damage to fleet equipment due to lubricant failure or incompatibility with equipment manufacturer specifications.

10.2 Copies of manufacturer warranties on all products bid must accompany bid documents.

11. ***DELIVERY***

11.1 All products furnished are to be delivered F.O.B. to the City's Fleet Operations facility, located at 1525 S. Happy Hollow Road, Fayetteville, Arkansas 72701.

Bid 09-54, Addendum 1

Fayetteville
ARKANSAS

Date: Wednesday, August 19, 2009

To: All Prospective Vendors

From: Andrea Foren, CPPB – 479.575.8220 – aforen@ci.fayetteville.ar.us

RE: Bid 09-54, Oil and Lubricants

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

- **Bid 09-54, has the following modifications and clarifications:**

1) Page 8, Item 1.8 – General: Change to Read
   - Prices may be adjusted up or down upon presentation of documented price change from the lubricant manufacture applicable to all commercial users. Adjustment shall not exceed actual cost change to the vendor. Adjustments shall be limited to (2) two per contract year and no increase will be allowed for the first (6) months of this contract.

2) Page 8, Item 1.5 – General: Add the Following
   - The City will conduct its own measurements for quantity control.

3) Page 10, Item 4 – Tractor Hydraulic Fluid: Add the Following
   - 6.1 b. The oils listed have been up graded and do meet specs for the CJ-4 classification.

4) Page 10, Item 5 – Automatic Transmission Fluid: Change to Read
   - b. OEM approved for Ford MERCON, MERCON V

5) Page 10, Item 6 – Multi-Purpose Gear Lubricant: Add the Following
   - c. We are not requesting limited slip additive oil.

6) **The bid form has been revised for this bid. All bidders shall submit bids with the bid form provided in this addendum.**

7) There is no request needed for heavy duty transmission oil.

City of Fayetteville
Bid 09-54, Oil and Lubricants
Terms and Conditions

1. All bids shall be submitted in a sealed envelope and must be submitted on forms acquired by the vendor from the City of Fayetteville Purchasing website (www.accessfayetteville.org). Bids with missing pages or missing any requested attachment will be deemed incomplete.

2. The item bid and the bid number shall be stated on the face of the sealed bid envelope.

3. Bids received after the date and time set for receiving bids will not be considered.

4. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City.

5. The quantities listed are based on the needs of the City and availability of funds at the time bids are posted. The City shall be able to purchase more or less than the quantity indicated subject to availability of funds or change in needs.

6. The bid price shall remain good and firm until project is completed.

7. All products delivered shall comply with applicable standards of quality.

8. Any exceptions to the specification requirements of the City of Fayetteville must be noted on the Bid Form.

9. Prices shall include all labor, materials, overhead, profit, insurance, etc., to cover the furnishing of the items bid. ***Sales tax is not to be included in the bid price***. Applicable Arkansas sales tax laws will apply to this bid, but will not be considered in award of the bid.

10. Each bidder shall state on the face of the bid form the anticipated number of days from the date of receipt of an order for delivery of equipment and installation to the City of Fayetteville. Failure to deliver on or before the time specified in the contract may subject the contractor to payment of damages or other appropriate sanctions.

11. Copy of the warranty shall accompany the bid, and any exceptions to the warranty shall be clearly noted on the bid form. Written warranties shall specify the greater of the manufacturer's standard warranty or the minimum warranty specified herein by the City.

12. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.

13. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.

14. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the city to pay for any costs incurred by bidder in preparation of bid.

15. If products and/or components other than those described in this bid document are proposed, the bidder must include complete descriptive literature and technical specifications. All requests for additional information must be received within five working days following the request. Each apparent low bid will be reviewed line by line to ensure compliance with specifications prior to recommendation for award.

16. Bids must be received by mail or hand delivery in the ***Purchasing Office, Room 306, 113 W. Mountain St. Fayetteville, AR 72701***, on or before the time of closing listed on the face of the bid.

17. The City will not be responsible for misdirected bids. Vendor should call the Purchasing Office at (501) 575-8220 to insure receipt of their bid documents prior to opening time and date listed on the bid form.

18. Items bid must be delivered FOB Fleet Operations Division, 1525 S. Happy Hollow Road, Fayetteville, AR 72701. Units must be fully assembled, serviced, and ready for operation as delivered unless otherwise specified. No dealer/distributor logo or other identification will be installed other than standard manufacturer name badges and specification plates.

19. Any reference to a particular brand or manufacturer is done in an effort to establish an acceptable level of quality for this project.

CONTRACT

This Contract executed this _____ day of _____, 2009 between the City of Fayetteville, Arkansas a municipal corporation and Frost Oil Company of Fayetteville.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1) Frost Oil Company of Fayetteville at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per bid #09-54.

2) The City of Fayetteville shall pay $58,363.00 for products based on City of Fayetteville specifications and prices indicated in Frost Oil Company of Fayetteville's bid proposal. Payments will be made by City purchasing card. Invoices and receipts will be delivered when product is delivered.

3) The Contract documents which comprise the contract between the City of Fayetteville and Frost Oil Company of Fayetteville consist of this Contract and the following documents attached hereto, and made a part hereof:

   a) Bid form identified as Invitation to Bid 09-54 with the specifications and conditions typed thereon.

   b) Frost Oil Company of Fayetteville's bid proposal.

   c) The Notice to Prospective Bidders and the Bid Tabulation.

4) These Contract documents constitute the entire agreement between the City of Fayetteville and Frost Oil Company of Fayetteville and may be modified only by a duly executed written instrument signed by the City of Fayetteville and Frost Oil Company of Fayetteville.

5) Frost Oil Company of Fayetteville shall not delegate it's duties under the terms of this agreement.

6) Frost Oil Company of Fayetteville agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from Frost Oil Company of Fayetteville's performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

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

Workmen's Compensation	Statutory Amount
Comprehensive General & Automobile Insurance	
Bodily Injury Liability	$250,000 for each person injured

Property Damage Liability	$500,000 for each accident $100,000 aggregate

8) The premiums for all insurance and the bond required herein shall be paid by Frost Oil Company of Fayetteville.

9) Frost Oil Company of Fayetteville to furnish proof of licensure as required by all local and state agencies.

10) This contract may be terminated by the City of Fayetteville or Frost Oil Company of Fayetteville with 10 days written notice.

11) Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Frost Oil Company of Fayetteville will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.

WITNESS our hands this _____ day of _____, 2009.

CITY OF FAYETTEVILLE

BY_____
LIONELD JORDAN, Mayor

ATTEST:

_____
SONDRA SMITH, City Clerk

FROST OIL COMPANY

BY_____

_____
PRINTED NAME AND TITLE

ATTEST:

_____
PRINTED NAME AND TITLE

731 S. Razorback Road
Fayetteville, AR, 72701
BUSINESS ADDRESS

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Frederick Gisler	Cable (Government Channel)	Communications
Submitted By	**Division**	**Department**

Action Required:

A resolution approving bid #09-55 to Electronic Video Systems in the amount of $23,183.00 for the purchase of replacement video production system and related equipment for City Council Chambers, Room 219, City Hall.

$23,183.00	$ 74,017.00	PEG TV Center - Equipment
Cost of this request	Category / Project Budget	Program Category / Project Name
4470-9470-5210.00	$ 33,853.62	
Account Number	Funds Used to Date	Program / Project Category Name
2061-1	$ 40,163.38	Sales Tax Capital Improvement
Project Number	Remaining Balance	Fund Name

Budgeted Item XX **Budget Adjustment Attached**

Department Director — Date 9-9-09

City Attorney — Date 9/11/09

Finance and Internal Services Director — Date 9-11-2009

Chief of Staff — Date 9-14-09

Mayor — Date 9/14/09

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED 9/9/09

Received in Mayor's Office — ENTERED 9/11/09

Comments:

The Fayetteville
Government Channel
101 W. Rock Street
Fayetteville, AR 72701
479-444-3434

Interdepartmental Correspondence

To: **Mayor Lioneld Jordan/City Council**
Through: **Lindsley Smith, Director of Communication**
From: **Fritz Gisler, Station Manager**
Date: **September 8, 2009**
Re: **Video Production Equipment Replacement; City Hall Room 219**

Recommendation:

That the City Council approve the purchase of a new video production system and related equipment for use of producing live video telecasts and recorded meetings of the City Council and other groups in Room 219 of City Hall from Electronic Video Systems, the lowest bidder, for the amount of $23,183.00

Background:
During routine maintenance of the video production system in the City Council chambers, City Hall Room 219, it was discovered a vital part of the system, the video switcher, is failing. Part of the functionality of the unit has failed completely. The control and synchronization signals it produces are unstable and not within specifications. The switcher is at least 20 years old, and service and repair parts cannot be obtained.

The video production system in Room 219 is comprised of several components, most of which are over 10 years old, many nearly 20 years old.

Approval of this expenditure would provide for the installation of three new remotely operated cameras, a new video switcher/processing/graphics system, streamline the system architecture, replace cabling as needed and reconfigure the control room to enhance the workability. The two cameras presently on the floor will be removed.

The expenditure will also reduce labor costs, increase technical quality, stability and reliability, reduce energy costs and increase flexibility.

Currently a minimum of 78 labor hours per month is budgeted to produce telecasts and record meetings held in Room 219. The new system can reduce the labor necessary to produce and record meetings in Room 219 by 30% to 60%, allowing those hours to be reallocated to other projects.

Bid #09-55 was opened on September 3, 2009 and the apparent low bidder was Electronic Video Systems with a bid of $23,138.00 for the requested specifications and equipment. Attached are a detailed bid tab sheet, a purchase order request and a copy of the bid submitted by Electronic Video Systems.

The funding for this expenditure currently exists in the PEG Center CIP budget approved for 2009.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #09-55 AND APPROVING THE PURCHASE OF A VIDEO PRODUCTION SYSTEM AND RELATED EQUIPMENT FROM ELECTRONIC VIDEO SYSTEMS IN THE AMOUNT OF $23,183.00 FOR USE IN THE CITY COUNCIL CHAMBER.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #09-54 and approves the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

BID: 09-55
DATE: 09/03/09
2:00 PM
CITY OF FAYETTEVILLE

Bid 09-55, Cable Equipment

Item #	Description	Estimated Quantity	B&H Photo		Electronic Video Systems		VSA, Inc.	
			PRICE EACH	TOTAL PRICE	PRICE EACH	TOTAL PRICE	PRICE EACH	TOTAL PRICE
1	Switcher/Controller	1	$9,745.00	$9,745.00	$8,739.00	$8,739.00	$9,145.00	$9,145.00
	MANUFACTURER / MODEL		as specified	as specified	Newtek	TRICASTER BROADCAST	Newtek	TCBCF
2	Live Control Physical Switcher	1	$1,790.00	$1,790.00	$1,763.00	$1,763.00	$1,733.00	$1,733.00
	MANUFACTURER / MODEL		as specified	as specified	Newtek	LC11	Newtek	LC11
3	22" LCD Color Monitor	2	$154.95	$309.90	$206.00	$412.00	$176.00	$352.00
	MANUFACTURER / MODEL		as specified	as specified	Acer	V2123WBD	Acer	V223WBD
4	Pan/Tilt/Zoom Camera	3	$3,390.00	$10,170.00	$3,376.00	$10,128.00	$3,371.00	$10,113.00
	MANUFACTURER / MODEL		as specified	as specified	Sony	BRC300	Sony	BRC300
5	Camera Remote Controller	1	$1,224.00	$1,224.00	$1,256.00	$1,256.00	$1,188.00	$1,188.00
	MANUFACTURER / MODEL		as specified	as specified	Sony	RMBR300	Sony	RMBR300
6	Wall/Column Mount for PTZ Camera	3	$240.00	$720.00	$246.00	$738.00	$233.00	$699.00
	MANUFACTURER / MODEL		as specified	as specified	Sony	BRCH/WMPP	Sony	BRCH/WMPP
7	VISCA Remote Control Cable	3	$0.00	$0.00	$49.00	$147.00	$53.00	$159.00
	MANUFACTURER / MODEL		NO BID	NO BID	TECNEC	VISCA-MDX8-50	TECNEC	VISCA-MDX8-50
	TOTAL BASE BID		$23,958.90		$23,193.00		$23,389.00	

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

CERTIFIED: A. FOREN, PURCH AGENT

WITNESS

9/3/09
DATE

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under $2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:	Date: 9/8/2009
P.O Number:	Expected Delivery Date:
Mail Yes:__ No:____	
Taxable Yes:__ No:____	Quotes Attached Yes: XX No:____
Divison Head Approval:	
Extension: 438	

Vendor #: 84340	Vendor Name: Electronic Video Systems
Address: 2029 W. Woodland	Fob Point:
City: Springfield	State: MO
Zip Code: 65807	Ship to code:
Requester: Frederick Gisler	Requester's Employee #: 3294

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	**Video Production Equipment per Bid 09-55**				**$23,183.00**	**4470-9470-5210.00**	**2061-1**		
2					**$0.00**				
3					**$0.00**				
4					**$0.00**				
5					**$0.00**				
6					**$0.00**				
7					**$0.00**				
8					**$0.00**				
9					**$0.00**				
10					**$0.00**				
*	Shipping/Handling		Lot		**$0.00**				

Special Instructions:

Subtotal:	**$23,183.00**
Tax:	**$2,144.43**
Total:	**$25,327.43**

Approvals:

Mayor: _____ Department Director: _____ Purchasing Manager: _____

Finance & Internal Services Director: _____ Budget Manager: _____ IT Manager: _____

Dispatch Manager: _____ Utilities Manager: _____ Other: _____

Revised 1/2/2008

Fayetteville
ARKANSAS

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220
TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: BID 09-55, Cable Equipment
DEADLINE: Thursday, September 03, 2009 at 2:00 PM, Central Standard Time
DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701
PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220
DATE OF ISSUE AND ADVERTISEMENT: Thursday, August 13, 2009

INVITATION TO BID
BID 09-55, Cable Equipment

No late bids will be accepted. Bids shall be submitted in sealed envelopes labeled "Bid 09-55, Cable Equipment" with the name and address of the bidder.

All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Electronic Video Systems

Contact Person: Jodi Perez Title: Sales Assistant/Purchasing

E-Mail: jodip@evsinc.com Phone: (800)299-4387

Business Address: 2029 West Woodland

City: Springfield State: MO Zip: 65807

Signature: Jodi Perez Date: 8/27/09

City of Fayetteville
Bid 09-55, Cable Equipment
Bid Form

***GUARANTEED DELIVERY DATE:** 30 days ARO or sooner

F.O.B. City of Fayetteville, 113 W. Mountain, Fayetteville, AR 72701

ITEM:	DESCRIPTION:	QUANTITY:	*PRICE EACH:	*TOTAL PRICE
1.	Switcher/Controller *MANUFACTURER: NEWTEK MODEL: TRICASTER BROADCAST	1	$ 8739.00	$ 8739.00
2.	Live Control Physical Switcher *MANUFACTURER: NEWTEK MODEL: LC11	1	$ 1763.00	$ 1763.00
3.	22" LCD Color Monitor *MANUFACTURER: Acer MODEL: V2123WBD	2	$ 206.00	$ 412.00
4.	Pan/Tilt/Zoom Camera *MANUFACTURER: Sony MODEL: BRC300	3	$ 3376.00	$ 10128.00
5.	Camera Remote Controller *MANUFACTURER: Sony MODEL: RMBR300	1	$ 1256.00	$ 1256.00
6.	Wall/Column Mount for PTZ Camera *MANUFACTURER: SONY MODEL: BRCH/WMPP	3	$ 246.00	$ 738.00
7.	VISCA Remote Control Cable *MANUFACTURER: TECNEC MODEL: VISCA-MDX8-50	3	$ 49.00	$ 147.00

TOTAL BASE BID (Item 1 through 7): $ 23183.00
Item 1 through 7

Note: Bid evaluation for award will be based on Total Base Bid.

THIS FORM CONTINUES ON THE NEXT PAGE. . .

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

Upon signing this Bid, the bidder certifies that:

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

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

***NAME OF FIRM:** ELECTRONIC VIDEO SYSTEMS
Purchase Order/Payments shall be issued to this name

***BUSINESS ADDRESS:** 2029 WEST WOODLAND

***CITY:** SPRINGFIELD ***STATE:** MO ***ZIP:** 65807

***PHONE:** (800)299-4387 **FAX:** (417)881-8753

***E-MAIL:** jodip@evsinc.com

***BY: (PRINTED NAME)** Jodi Perez

***AUTHORIZED SIGNATURE:** Jodi Perez

***TITLE:** Sales Assistant/Purchasing

City of Fayetteville
Bid 09-55, Cable Equipment
Terms and Conditions

1. All bids shall be submitted in a sealed envelope and must be submitted on forms acquired by the vendor from the City of Fayetteville Purchasing website (www.accessfayetteville.org). Bids with missing pages or missing any requested attachment will be deemed incomplete.

2. The item bid and the bid number shall be stated on the face of the sealed bid envelope.

3. Bids received after the date and time set for receiving bids will not be considered.

4. The City reserves the right to accept or reject any or all bids, waive formalities in the bidding and make a bid award deemed to be in the best interest of the City.

5. The quantities listed are based on the needs of the City and availability of funds at the time bids are posted. The City shall be able to purchase more or less than the quantity indicated subject to availability of funds or change in needs.

6. The bid price shall remain good and firm until project is completed.

7. All products delivered shall comply with applicable standards of quality.

8. Any exceptions to the specification requirements of the City of Fayetteville must be noted on the Bid Form.

9. Prices shall include all labor, materials, overhead, profit, insurance, etc., to cover the furnishing of the items bid. ***Sales tax is not to be included in the bid price.*** Applicable Arkansas sales tax laws will apply to this bid, but will not be considered in award of the bid.

10. Each bidder shall state on the face of the bid form the anticipated number of days from the date of receipt of an order for delivery of equipment and installation to the City of Fayetteville. Failure to deliver on or before the time specified in the contract may subject the contractor to payment of damages or other appropriate sanctions.

11. Copy of the warranty shall accompany the bid, and any exceptions to the warranty shall be clearly noted on the bid form. Written warranties shall specify the greater of the manufacturer's standard warranty or the minimum warranty specified herein by the City.

12. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.

13. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.

14. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind;

nor does it commit the city to pay for any costs incurred by bidder in preparation of bid.

15. If products and/or components other than those described in this bid document are proposed, the bidder must include complete descriptive literature and technical specifications. All requests for additional information must be received within five working days following the request. Each apparent low bid will be reviewed line by line to ensure compliance with specifications prior to recommendation for award.

16. Bids must be received by mail or hand delivery in the ***Purchasing Office, Room 306, 113 W. Mountain St. Fayetteville, AR 72701***, on or before the time of closing listed on the face of the bid.

17. The City will not be responsible for misdirected bids. Vendor should call the Purchasing Office at (479) 575-8220 to insure receipt of their bid documents prior to opening time and date listed on the bid form.

18. Items bid must be delivered FOB City of Fayetteville, 113 W. Mountain, Fayetteville, AR 72701. Units must be fully assembled, serviced, and ready for operation as delivered unless otherwise specified. No dealer/distributor logo or other identification will be installed other than standard manufacturer name badges and specification plates.

19. Any reference to a particular brand or manufacturer is done in an effort to establish an acceptable level of quality for this project. Brands or manufacturers that are of equal quality to what is specified will be acceptable for consideration. The City reserves the right to determine if a product is equal to a specified item.

20. All equipment shall be compatible with and have input and/or output for NTSC analog composite video. Audio input/output shall be balanced. All equipment shall have a minimum of 1 year warranty along with a 24-hour guaranteed replacement for failed equipment.

    a. Vendor assumes responsibility for all shipping charges for a failed equipment situation within the 1 year warranty time period.

21. All prices bid shall include shipping.

22. The following chart provides approved manufacturers for this purchase. Please refer to item 19 above for information about alternate manufacturers.

Line Item	Model #	Description	Manuf.
1	TCBCF	Tricaster Broadcast	Newtek
2	LC11	Live Control Physical Switcher	Newtek
3	V223WBD	22" LCD Monitor	Acer
4	BRC300	Pan/Tilt/Zoom Camera	Sony
5	RMBR300	Joystick Remote Control for BRC300	Sony
6	BRCH/WMPP	Plexiglass Wall Mount for BRC300	Sony
7	VISCA-MDX8-50	Visca 8-Pin DIN Male-Male Cable, 50'	TecNec

City of Fayetteville
Bid 09-55, Cable Equipment
Detailed Specifications

When given the option, mark "yes", verifying you can meet each specification. If you cannot meet a specification, mark "no" and write how your product differs from what is specified.

GENERAL -

a.) All appropriate equipment must be compatible with and have input and/or output for NTSC analog composite video.

b.) Audio input/output must be balanced.

c) All equipment shall have a minimum 1 year warranty, along with 24-hour replacement for failed equipment during the warranty period. **The quoted manufactures do not provide 24 hour replacement**

ITEM 1 – SWITCHER/CONTROLLER

90 day, and 1 year hardware

1.) Video Input:
- a. yes 6 Serial Digital minimum
- b. yes 6 Component minimum
- c. yes 6 Composite minimum
- d. yes 1 VGA input minimum

2.) Recording Capacity:
- a. yes 20 Hours MPEG-2

3.) Video Output :
- a. yes 1 Serial Digital Program out
- b. yes 1 Component Program out
- c. yes 1 Composite Program out

4.) Audio Input:
- a. yes 4 Balanced XLR
- b. yes 1 Serial Digital Embedded (capture only)
- c. yes 1 AES/EBU Digital Audio in

5.) Video Ingest:
- a. yes 1, 4-pin IEEE FireWire®
- b. yes 1, 6-pin IEEE FireWire®

6.) Audio Output:
- a. yes 2 Balanced phone out
- b. yes 1 AES/EBU Digtital Audio out
- c. yes 2 unbalanced RCA line out

7.) # Line Inputs:
a. yes 4 XLR/phone

8.) # Line Outputs:
a. yes 2 balanced phone; 2 RCA

9.) Mic Inputs:
a. yes 4 balanced (XLR or phone)

10.) Tally:
a. yes 6 Tally Light Connections

11.) Virtual Set Support:
a. yes Yes; virtual sets included.

12.) Integrated Character Generator:
a. yes Yes

13.) Projector Output:
a. yes Yes; 4:3 and 16:9 aspects

14.) 16:9 Video Support:
a. yes Yes

15.) Camera Auto-Calibration:
a. yes Yes

16.) Projector Resolutions:
a. yes XGA, SXGA, QSXGA and higher; DVI, HDMI and analog outputs

17.) 16:9 streaming:
a. yes Yes

18.) Live Web Casting:
a. yes Yes; push or pull Windows Media with VC-1 and Flash streaming support

19.) DDR Playback:
a. yes 2 DDRs, with alpha channel assignable to downstream key

20.) Recorder:
a. yes Simultaneous MPEG-2 + WMV records

21.) Preview Out:
a. yes Yes

22.) Waveform Monitor:
a. yes Yes

23.) Vectorscope:
a. yes Yes

24.) Nonlinear Editor:
a. yes Yes

25.) Phantom Power:
a. yes Yes

26.) File Formats:
a. yes AVI, DV, MPEG-2, QuickTime, HDV, JPG, PNG

27.) Upstream Effects:
a. yes Yes

28.) Render Outputs:
a. yes AVI, DV, MPEG-2, DVD, QuickTime, MP4 (iPod and PSP)

ITEM 2 – Live Control Physical Switcher

1.) yes Physical remote control for Switcher/Controller

2.) yes Control of input selection

3.) yes Control of transitions/effects

4.) yes Control of program/preview selection

5.) yes Control of effects/keying input

6.) yes Tactile control of all inputs

7.) yes High quality, hermetically-sealed magnetic-reed switches

8.) yes High quality, rotary encoders

9.) yes Speed control

10.) yes Effects selection

11.) yes CG page selection

12.) yes 8-bit stepping for 256 discrete transition levels on T-bar

ITEM 3 – 22" LCD Color Monitor

1.) yes 22" diagonal measurement or greater

2.) yes VGA + DVI input

3.) yes 1680 x 1050 or greater

4.) yes 2500:1 Dynamic Contrast or greater

5.) yes 300cd/m2 Brightness or better

6.) yes 170°/160° Viewing Angle or greater

7.) yes 16.7 Million Colors

8.) yes 72% NTSC Color Gamut or better

ITEM 4 – Pan/Tilt/Zoom Cameras

1.) Application:
   a. yes Table or Ceiling Mount
   b. yes VISCA remote control capability

2.) Image Device:
   a. yes 1/4.7 Inch (0.213 inches) 3-CCD

3.) Signal System:
   a. yes NTSC

4.) Lens:
   a. yes 3.6 mm to 46.2 mm (12x Optical Zoom) f/1.6-2.8

5.) Number of Pixels:
   a. yes 1,070,000 Total Pixels

6.) Horizontal Resolution:
   a. yes 600 TV Lines or greater

7.) Minimum Illumination:
   a. yes 7 Lux at f/1.6 or better

8.) Signal-to-Noise Ratio:
   a. yes 50 dB or greater

9.) Maximum Horizontal Field-of-View:
   a. yes 37.8° in 4:3 Mode or greater
   b. yes 45.4° in 16:9 Mode or greater

10.) Pan Angle:
a. yes +/- 170 Degrees from Center

11.) Pan Speed:
a. yes Variable from at least 0.25° to 60° per Second

12.) Tilt Angle:
a. yes +90 degrees upward / -30 degrees from Horizontal or greater

13.) Tilt Speed:
a. yes Variable from at least 0.25° to 60° per Second

14.) Signal Connectors:
a. yes Composite Video- BNC (x 1 output)
b. yes S-Video- 4-Pin (x 1 output)
c. yes RS-232C/RS-422 Control- 9-Pin (x 1)
d. yes VISCA control in/out – 8-pin DIN

15.) Power Requirements:
a. yes 12 Volts DC

16.) Power Consumption:
a. yes 21.6 Watts Minimum

17.) Operating Temperature:
a. yes 32 to 104 degrees F

ITEM 5 – CAMERA REMOTE CONTROLLER

1.) VISCA Control System
a. yes Joystick controller for camera moves and focus adjustments
b. yes 6 preset camera and lens positions programmable for immediate recall or greater

2.) Camera Operations:
a. yes Pan/Tilt/Zoom/Focus
b. yes Auto-focus
c. yes White balance
d. yes Auto-exposure feature
e. yes Backlight compensation
f. yes Tally light

3.) yes Daisy-chain cabling capability

ITEM 6 – Wall/Column Mounts for PTZ Camera

1.) yes Manufacturer approved for specified PTZ cameras

2.) yes Adaptable to wall or column mount

3.) yes Weight capacity to support specified PTZ cameras

4.) yes Dimensions to support specified PTZ cameras

5.) yes Mountable using commonly attainable tools and materials

ITEM 7 – VISCA Remote Control Cable

1.) yes 8-pin DIN male connectors

2.) yes 50' length or greater

3.) yes Equivalent to manufacturer's specifications for PTZ Cameras and Camera Remote controller

State of Missouri

Office of Administration
Office of Supplier and Workforce Diversity

Kelvin L. Simmons
Commissioner of Administration

Alan K. Green
Director

This is to certify ***Electronic Video Systems Inc.*** *qualifies as a Woman-Owned Business Enterprise that has met the eligibility criteria established by the State of Missouri, Office of Administration.*

Alan K. Green, Director, Office of Supplier and Workforce Diversity

Certification Number W01936 *Date of Issue* 6/29/2009 *Date of Expiration* 7/1/2012

City of Fayetteville
Bid 09-55, Cable Equipment
Statement of No Bid – If Applicable

In order to assist the Purchasing Division of Fayetteville in evaluating and improving our solicitation process, we are asking for completion of this form and returning via fax or e-mail. By submitting this form, it will assist us in evaluating all response, improving our bid solicitation process, and to maintain a positive relationship with our vendors.

We, the undersigned, have declined to bid for the following reason(s):

1. _____ We do not offer this service/product
2. _____ Our schedule would not permit us to perform
3. _____ Unable to meet specifications
4. _____ Insufficient time to respond to the Invitation to Bid
5. _____ We are unable to meet bond requirements
6. _____ Other (Explain)

*NAME OF FIRM: _____

*BUSINESS ADDRESS: _____

*CITY: _____ *STATE: _____ *ZIP: _____

*PHONE: _____ FAX: _____

*E-MAIL ADDRESS: _____

*BY :(PRINTED NAME) _____

*AUTHORIZED SIGNATURE: _____

*TITLE: _____ *DATE: _____

*PLEASE LIST OTHER COMMENTS BELOW:

*Please note: We appreciate your feedback on this form and are very interested in your reason for not bidding. Please do not hesitate to contact us at 479-575-8220 if you have questions, comments, or concerns regarding these bid documents.

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Matt Mihalevich	Engineering	Development Services
Submitted By	**Division**	**Department**

Action Required:

Staff requests approval of a resolution awarding Bid #09-57 and approving a contract with Danny Robinson Construction, LLC. in the amount of $91,044.00 for the complete installation of the 2 trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

$ 36,451.60	$ 1,434,381.00	Trail Development
$ 68,249.00	$ 129,285.00	Transportation Bond Trail Improvements
Cost of this request	Category / Project Budget	Program Category / Project Name
4470-9470-5814.05	$ 700,717.62	Transportation Improvements
4520.9520.5814.05	$ 60,035.11	Trail Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02016 / 4	$ 733,663.38	Sales Tax Capital Improvements
06036 / 1	$ 69,249.89	Sales Tax 2006A Construction Fund
Project Number	Remaining Balance	Fund Name

Budgeted Item X **Budget Adjustment Attached** ☐

Department Director — Date 09.21.2009

City Attorney — Date 9/21/09

Finance and Internal Services Director — Date 9/23/09

Chief of Staff — Date 9-23-09

Mayor — Date 9/22/09

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office

Received in Mayor's Office — ENTERED 9/22/09

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

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

From: Matt Mihalevich, Trails Coordinator

Date: September 18th, 2009

Subject: Lake Fayetteville Trail Bridges Installation

RECOMMENDATION:

Staff requests approval of a resolution awarding Bid #09-57 and approving a contract with Danny Robinson Construction, LLC. in the amount of $91,044.00 for the complete installation of the 2 trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

BACKGROUND:

Construction of phase III of the Lake Fayetteville Trail is underway to extend the 10 foot wide paved trail from the current end at the northeast corner of the park near Highway 265 south to the Botanical Gardens. This 1.6 mile trail extension will cross Clear Creek with a 140 foot single span bridge and the trail will also cross a small tributary near the Botanical Gardens with a 35 foot single span bridge.

DISCUSSION:

In an effort to reduce cost, the bridges have been purchased directly by the City from Wheeler Lumber LLC and approved through resolution #131-09. The bridges will be delivered to the bridge sites and installed by Danny Robinson Construction, LLC. The project scope of work will also include the construction of concrete foundations and abutments, pouring of the concrete bridge deck and installation of concrete approach slabs.

The installation of the bridges was advertised on August 28th and September 4th 2009 as bid number 09-57 with official bids received on September 18th, 2009. Six bids were received and Danny Robinson Construction Co. was low bid. The official bid tab is attached.

BUDGET IMPACT:

Funds for the installation of the Lake Fayetteville Bridges have been budgeted as part of the Transportation Bond Trail Development Program and Transportation Trail Improvements Program Sales Tax Capital.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #09-57 AND APPROVING A CONTRACT WITH DANNY ROBINSON CONSTRUCTION, LLC IN THE AMOUNT OF $91,044.00 FOR THE COMPLETE INSTALLATION OF TWO (2) TRAIL BRIDGES FOR THE THIRD PHASE OF LAKE FAYETTEVILLE TRAIL; AND APPROVING A 15% PROJECT CONTINGENCY IN THE AMOUNT OF $13,656.60.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby awards Bid #09-57 and approves a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the Third Phase of Lake Fayetteville Trail. A copy of the contract, marked Exhibit "A," is attached hereto and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas, hereby approves a 15% project contingency in the amount of $13,656.60.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDON, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

Fayetteville
ARKANSAS

BID: 09-57
9/18/2009
10:00 AM
CITY OF FAYETTEVILLE

Bid 09-57, Lake Fayetteville Trail Bridges Installation

	BIDDER	Total Bid Price
1	Benchmark Construction	$117,650.00
2	Danny Robinson Construction, LLC	$91,044.00
3	Fochtman Enterprises, Inc	$199,390.00
4	Kinco Constructors, LLC	$110,707.00
5	Sweetser Construction	$106,265.00
6	Tomlinson Asphalt Co., Inc.	$99,105.00

:E: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City of

CERTIFIED: A. FOREN, PURCH AGENT — WITNESS — 09/18/09 DATE

City Of Fayetteville

Requisition No.:
Date: 10/6/2009
P.O Number:
Expected Delivery Date: ASAP

Vendor #: XXX
Vendor Name: Danny Robinson Construction, LLC
Mail Yes: X No:
Address:
Fob Point:
Taxable Yes: No: X
Quotes Attached Yes: No: X
City:
State:
Zip Code:
Ship to code: 104
Divison Head Approval:
Requester: Ginny Gundlach / Matt Mihalevich
Requester's Employee #: 2283
Extension: 489

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Lake Fayetteville Trail Bridge Installation	1	Lot	$68,249.00	$68,249.00	4520.9520.5814.05	06036 / 1		
2	Lake Fayetteville Trail Bridge Installation	1	Lot	$22,795.00	$22,795.00	4470.9470.5814.05	02016 / 4		
3									
4									
5									
6									
7									
8									
9									
10									

Special Instructions:
Per Bid 09-57 and Res __-09

Subtotal: $91,044.00
Tax: $5,625.14
Total: $96,669.14

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

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Dennis Pratt / Barbara Olsen	Fleet Operations	Transportation
Submitted By	**Division**	**Department**

Action Required:

A resolution (~~repealing~~ rescinding Resolution #117-09) awarding Bid #09-58 to Chevy of Fayetteville, in the amount of $19,800.00 for the purchase of one compact 4 x 4 pickup truck for use by the Airport.

$ 19,800.00	$ 348,000.00	Light/Medium Utility Vehicles
Cost of this request	Category / Project Budget	Program Category / Project Name
9700.1920.802.00	$ 190,016.00	Vehicles and Equipment
Account Number	Funds Used to Date	Program / Project Category Name
02078.2009	$ 157,984.00	Shop Fund
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] **Budget Adjustment Attached** [ ]

Department Director — Date: 9-21-09

City Attorney — Date: 9/21/09

Finance and Internal Services Director — Date: 9/22/09

Chief of Staff — Date: 9-22-09

Mayor — Date: 9/22/09

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED 9-18-09

Received in Mayor's Office — ENTERED 9/24/09

Comments:

Revised January 15, 2009

Fayetteville
ARKANSAS

FLEET OPERATIONS
1525 S. Happy Hollow Road
Fayetteville, AR 72701
(479) 444-3495 FAX (479) 444-3425

100 BEST FLEETS of Fayetteville

Interdepartmental Correspondence

TO: MAYOR/CITY COUNCIL

THRU: TERRY GULLEY, DIRECTOR OF TRANSPORTATION

FROM: DENNIS PRATT, FLEET OPERATIONS SUPT.

DATE: September 18, 2009

SUBJECT: Purchase of one compact 4 x 4 pickup truck

RECOMMENDATION: That City Council rescind Resolution #117-09 to purchase a compact 4x4 pickup truck from Lewis Ford of Fayetteville, and approve the purchase of a compact 4x4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00

BACKGROUND: At the Council meeting of June 2, 2009 approval was given to purchase one compact 4 x 4 pickup truck from Lewis Ford of Fayetteville for use by the Airport. Purchase Order #09-385 was issued and the order was placed. Lewis Ford phoned Fleet Operations to advise that Ford Motor Co. had received so many orders for 4x4 Rangers that the order window closed 4 weeks earlier than planned and the trucks were not available.

Bid 09-58 was sent out when the 2010 models became available. A detailed bid tab sheet is attached. The lowest bid **that meets specs** is from Chevy of Fayetteville.

I recommend the purchase of the pickup from Chevy of Fayetteville in the amount of $19,800.00.

This purchase was approved by the Equipment Committee at the meeting on April 1, 2009.

Funds are available for this purchase in Project 02078, Light/Medium Utility Vehicles.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTION #117-09, AWARDING BID #09-58 AND APPROVING THE PURCHASE OF ONE (1) COMPACT 4 x 4 PICKUP TRUCK FROM CHEVY OF FAYETTEVILLE IN THE AMOUNT OF $19,800.00 FOR USE BY THE FAYETTEVILLE EXECUTIVE AIRPORT.

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 rescinds Resolution #117-09 and awards Bid #09-58, approving the purchase of one (1) e compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

Fayetteville
ARKANSAS

BID: 09-58
9/14/2009
2:00 PM
CITY OF FAYETTEVILLE

Bid 09-58, Compact 4x4 Extended Cab Pickup

	BIDDER	Manufacturer	Model	Total Price
1	Cardinal Chrysler Jeep Dodge	Dodge	Dakota Club 4x4	$18,480.36
2	Chevy of Fayetteville	Chevy	Colorado	$19,800.00
3	Landers Chrysler Dodge Jeep	Dodge	2010 Dakota ExCab	$19,899.00
4	Landers Ford Lincoln Mercury	Ford	2010 Ranger Super Cab	$20,591.00
5	Lewis Ford Sales, Inc.	Ford	Ranger	$19,890.00
6	Whiteside Chevrolet, Inc.	Chevrolet	Colorado	$20,000.00

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

OLD #279
NEW #2135

CERTIFIED: A. FOREN, PURCH AGENT — WITNESS — 09/18/09 DATE

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under $2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

A. 5

Bid # 09-58 Chevy of Fayetteville

Requisition No.:	Date: 10/6/2009
P.O Number:	Expected Delivery Date:
Mail Yes:__	
Taxable Yes:___ No: X	Quotes Attached Yes:___ No:___
Divison Head Approval:	
Requester's Employee #: 1940	Extension: 485

Vendor #:	Vendor Name: CHEVY OF FAYETTEVILLE			
Address:		Fob Point:		
City:	State:	Zip Code:	Ship to code: 50	
Requester: BARBARA OLSEN				

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	2010 CHEVY COLORADO PICKUP TRUCK	1	EA	19,800.00	$19,800.00	970031920.5802.00	02078.2009		
2	4 X 4 EXTENDED CAB, PER BID #09-58				$0.00				
3	TO BE UNIT #2135, FIXED ASSET #702135.				$0.00				
4					$0.00				
5					$0.00				
6					$0.00				
7					$0.00				
8					$0.00				
9					$0.00				
10					$0.00				
*	Shipping/Handling		Lot		$0.00				

Special Instructions:

Subtotal:	$19,800.00
Tax: EXEMPT	
Total:	$19,800.00

Approvals:

Mayor: _____ Department Director: _____ Purchasing Manager: _____

Finance & Internal Services Director: _____ Budget Manager: _____ IT Manager: _____

Dispatch Manager: _____ Utilities Manager: _____ Other: _____

Revised 1/2/2008

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Dennis Pratt / Barbara Olsen	Fleet Operations	Transportation
Submitted By	**Division**	**Department**

Action Required:

A resolution (~~repealing~~ rescinding Resolution #118-09 and #122-09) awarding Bid #09-59 to Chevy of Fayetteville, in the amount of $33,994.00 for the purchase of two 2 x 4 pickup trucks for use by Inspections and Meter Divisions.

$ 33,994.00	$ 348,000.00	Light/Medium Utility Vehicles
Cost of this request	Category / Project Budget	Program Category / Project Name
9700.1920.5802.00	$ 209,816.00	Vehicles and Equipment
Account Number	Funds Used to Date	Program / Project Category Name
02078.2009	$ 138,184.00	Shop Fund
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] **Budget Adjustment Attached** [ ]

Department Director — 9-21-09 Date

City Attorney — 9/21/09 Date

Finance and Internal Services Director — 9/22/09 Date

Chief of Staff — 9-22-09 Date

Mayor — 9/22/09 Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office — ENTERED 9-18-09

Received in Mayor's Office — ENTERED 9/22/09

Comments:

Revised January 15, 2009

Fayetteville
ARKANSAS

FLEET OPERATIONS
1525 S. Happy Hollow Road
Fayetteville, AR 72701
(479) 444-3495 FAX (479) 444-3425

100 BEST FLEETS of Fayetteville

Interdepartmental Correspondence

TO: MAYOR/CITY COUNCIL

THRU: TERRY GULLEY, DIRECTOR OF TRANSPORTATION

FROM: DENNIS PRATT, FLEET OPERATIONS SUPT.

DATE: September 18, 2009

SUBJECT: Purchase of two compact 2 x 4 pickup trucks

RECOMMENDATION: That City Council rescind Resolutions #118-09 and #122-09 to purchase two compact 2 x 4 pickup trucks from Lewis Ford of Fayetteville, and approve the purchase of two compact 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $16,997 each for a total of $33,994.

BACKGROUND: At the Council meeting of June 2, 2009 approval was given (Res. #118-09) to purchase one compact 2 x 4 pickup truck from Lewis Ford of Fayetteville for use by Building Safety. Purchase Order #09-384 was issued and the order was placed. At the Council meeting of June 16, 2009 approval was given (Res. #122-09) to purchase a second pickup off the same bid from Lewis Ford for use by Meter Division. Purchase Order #09-391 was issued and the order was placed. Lewis Ford phoned Fleet Operations to advise that Ford Motor Co. had received so many orders for 2x4 Rangers that the order window closed 4 weeks earlier than planned and the trucks were not available.

Bid 09-59 was sent out when the 2010 models became available. A detailed bid tab sheet is attached. The lowest bid **that meets specs** is from Chevy of Fayetteville.

I recommend the purchase of two pickup trucks from Chevy of Fayetteville in the amount of $16,997 each for a total of $33,994.00.

This purchase was approved by the Equipment Committee at the meeting on April 1, 2009.

Funds are available for this purchase in Project 02078, Light/Medium Utility Vehicles.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTIONS #118-09 AND #122-09 AND AWARDING BID #09-59, APPROVING THE PURCHASE OF TWO (2) 2X4 PICKUP TRUCKS FROM CHEVY OF FAYETTEVILLE IN THE AMOUNT OF $33,994.00 FOR USE BY THE INSPECTIONS AND METER OPERATIONS DIVISIONS.

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 rescinds Resolutions #118-09 and #122-09 and awards Bid #09-59, approving the purchase of two (2) 2x4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

Fayetteville
ARKANSAS

BID: 09-59
9/14/2009
2:00 PM
CITY OF FAYETTEVILLE

Bid 09-59, Compact 2x4 Extended Cab Pickups

	BIDDER	Manufacturer	Model	Price Each	Qty	Total Price
1	Cardinal Chrysler Jeep Dodge	Dodge	Dakota Club Cab	$14,849.36	2	$29,698.72
2	Chevy of Fayetteville	Chevy	Colorado	$16,997.00	2	$33,994.00
3	Landers Chrysler Dodge Jeep	2010 Dodge	Dakota ExCab	$16,113.00	2	$32,226.00
4	Landers Ford Lincoln Mercury	2010 Ford	Ranger Super Cab	$18,522.00	2	$37,044.00
5	Lewis Ford Sales, Inc.	Ford	Ranger	$17,873.00	2	$35,746.00
6	Whiteside Chevrolet, Inc.	Chevrolet	Colorado	$17,198.00	2	$34,396.00

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

OLD 2040 NEW # 2136
OLD #2023 NEW # 2137

CERTIFIED: A. FOREN, PURCH AGENT — WITNESS — 09/18/09 DATE

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under $2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:

Date: **10/6/2009**

P.O Number:

Expected Delivery Date:

Vendor #:

Vendor Name: **CHEVY OF FAYETTEVILLE**

Mail Yes:__

Address:

Fob Point:

Taxable Yes:___ No: X

Quotes Attached Yes:_____ No:_____

City:

State:

Zip Code:

Ship to code: **50**

Divison Head Approval:

Requester: **BARBARA OLSEN**

Requester's Employee #: **1940**

Extension: **485**

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	**2010 CHEVY COLORADO PICKUP TRUCKS**	**2**	**EA**	**16,997.00**	**$33,994.00**	**9700.1920.5802.00**	**02078.2009**		
2	**2 X 4, EXTENDED CAB, PER BID #09-59**				**$0.00**				
3	**TO BE UNIT 2136, FIXED ASSET #702136 AND**				**$0.00**				
4	**UNIT 2137, FIXED ASSET #702137**				**$0.00**				
5					**$0.00**				
6					**$0.00**				
7					**$0.00**				
8					**$0.00**				
9					**$0.00**				
10					**$0.00**				
*	Shipping/Handling		Lot		**$0.00**				

Special Instructions:

Subtotal: **$33,994.00**

Tax: EXEMPT

Total: **$33,994.00**

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Other: _____

Revised 1/2/2008

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

David Jurgens	Utilities	Water/Wastewater
Submitted By	**Division**	**Department**

Action Required:

Resolution authorizing the Mayor to accept a $291,000 State and Tribal Assistance Grant (STAG) from the US Environmental Protection Agency for sanitary sewer system improvements and approving a budget adjustment effective upon receipt of the grant funds.

$ (291,000.00)	$ 3,470,013.00	Sanitary Sewer Rehabilitation
Cost of this request	Category / Project Budget	Program Category / Project Name
5400.5700.5815.00	$ 640,774.09	Sewer Main Construction
Account Number	Funds Used to Date	Program / Project Category Name
02017	$ 2,829,238.91	Water/Sewer
Project Number	Remaining Balance	Fund Name

Budgeted Item [ ] **Budget Adjustment Attached** [XX]

Department Director	18 Sep 09 Date	Previous Ordinance or Resolution #	144-09
City Attorney	9/21/09 Date	Original Contract Date:	7/7/2009
Finance and Internal Services Director	9/22/09 Date	Original Contract Number:	N/A
Chief of Staff	9-22-09 Date	Received in City Clerk's Office	ENTERED 9/18/09
Mayor	9/22/09 Date	Received in Mayor's Office	ENTERED 9/21/09

Comments:

Fayetteville
ARKANSAS

City Council Meeting of October 6, 2009

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Water and Sewer Committee

Date: September 18, 2009

Subject: Resolution authorizing the Mayor to accept a $291,000 State and Tribal Assistance Grant (STAG) from the US Environmental Protection Agency for sanitary sewer system improvements and approving a budget adjustment effective upon receipt of the grant funds

---

RECOMMENDATION

Fayetteville City Administration recommends approval of a resolution authorizing the Mayor to accept a $291,000 State and Tribal Assistance Grant (STAG) from the US Environmental Protection Agency for sanitary sewer system improvements and approving a budget adjustment effective upon receipt of the grant funds.

BACKGROUND

Fayetteville has been notified by Arkansas Natural Resources Commission that it is the recipient of $291,000 in USEPA Grant Assistance from the STAG Program for 2009. This is the sixth of seven years that the City has received similar grants. This EPA grant funding was requested for sanitary sewer rehabilitation and is proposed to be merged into the City's ongoing sewer rehabilitation funding to accelerate the program. The EPA grant provides a maximum of 55% of the costs, with the remaining 45% ($238,090) being the required local match.

By Resolution 144-09 on 7 July 09 the City Council approved application for this grant and designating the Mayor as the City's Authorized Representative in all matters relating thereto.

DISCUSSION

A sanitary sewer evaluation study (SSES) was completed in 2009 in the southern portions of Fayetteville and in Greenland. These grant funds will be used for the rehabilitation design and construction based on the results of the 2009 SSES as well as for system-wide cured in place pipe lining.

BUDGET IMPACT

Sanitary sewer rehabilitation is a budgeted project. The 2009 EPA Grant proceeds will be combined with the City's budgeted funds. A budget adjustment recognizing $291,000 in grant revenue is attached and will be finalized when the actual grant approval is received.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A STATE AND TRIBAL ASSISTANCE GRANT (STAG) IN THE AMOUNT OF $291,000.00 FROM THE U. S. ENVIRONMENTAL PROTECTION AGENCY FOR SANITARY SEWER SYSTEM IMPROVEMENTS; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT 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 authorizes the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U. S. Environmental Protection Agency for sanitary sewer system improvements.

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

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Operations Division: Water & Sewer Maintenance Program: Sewer Mains Construction	Date Requested	Adjustment Number
2009		9/18/2009	

Project or Item Added/Increased:

$291,000 is requested in the Sewer Improvements account for Sanitary Sewer Rehabilitation.

Project or Item Deleted/Reduced:

None. This action is required to recognize receipt of $291,000 State and Tribal Assistance Grant (STAG) from the Environmental Protection Agency.

Justification of this Increase:

Recognize the State and Tribal Assistance Grant (STAG) from the Environmental Protection Agency. Funding will be used for sanitary sewer rehabilitation to include repairs to sanitary sewer mains and manholes.

Justification of this Decrease:

Recognize the State and Tribal Assistance Grant (STAG) from the Environmental Protection Agency for the purpose of sanitary sewer rehabilitation.

Increase Budget

Account Name	Account Number				Amount	Project Number	
Sewer Improvements	5400	5700	5815	00	291,000	02017	0910

Decrease Budget

Account Name	Account Number				Amount	Project Number	
Federal Grants - Capital	5400	0940	4309	00	291,000	02017	0910

V.090403

	Date
Division Head	
Budget Director	9.18.09
Department Director	18 Sep 09
Finance Director	9/22/09
Chief of Staff	9-22-09
Mayor	9/24/09

Budget & Research Use Only

Type: A B C D E

Requested By

General Ledger Date

Posted to General Ledger — Initial — Date

Posted to Project Accounting — Initial — Date

David Jurgens - FW: Fayetteville FY 2009 grant - correction to the application Form424

From: Jayne Dooley <Jayne.Dooley@arkansas.gov>
To: David Jurgens <djurgens@ci.fayetteville.ar.us>
Date: 9/18/2009 7:21 AM
Subject: FW: Fayetteville FY 2009 grant - correction to the application Form424

David, it looks like the are about to award your grant and that it will be added to the 08 money. See below.

Jayne K. Dooley
Arkansas Natural Resources
101 East Capitol, Suite 350
L.R., AR 72201
501-682-0550
501-682-0561 fax
jayne.dooley@arkansas.gov

From: Patel.Rajen@epamail.epa.gov [mailto:Patel.Rajen@epamail.epa.gov]
Sent: Thursday, September 17, 2009 5:33 PM
To: Beets.Sharon@epamail.epa.gov
Cc: Jayne Dooley
Subject: Fayetteville FY 2009 grant - correction to the application Form 424

Sharon,

As per our conversation today, please call it a "continuum" of the existing grant XP 96673701-0.

As we add this FY 2009 earmark money to the existing award, it will become XP-96673701-1.

For now, we have coded it 2D. Please enter it in IGMS early October, so that I can prepare the FR/CN for this grant.

Here is one correction in the grant amount.

For item 18(a) and 18(g) on the 424, the amount should be $291,000. On the application it says $300,000. Fayetteville did not deduct the $9000 for the ANRC grant oversight (3% of each SAAP earmark given to state for oversight).

So, as per the attached image >>

Please change it accordingly and attach this email as the basis for such correction.

Thank you.

Rajen Patel, CHMM, EIT
Water Infrastructure Project Engineer
USEPA Region VI, Dallas, TX
214-665-2788

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 27 2009

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2009 Appropriations Act

FROM: James A. Hanlon, Director
Office of Wastewater Management (4201M)

TO: Water Management Division Directors
Regions I - X

PURPOSE

This memorandum provides information and guidelines on how the Environmental Protection Agency (EPA) will award and administer Special Appropriations Act Project (SAAP) grants identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2009 Appropriations Act.

BACKGROUND

The EPA section of P. L. 111-8, the "Omnibus Appropriations Act, 2009," also referred to as the Agency's FY 2009 Appropriations Act, includes $145,000,000 in the STAG account for 301 drinking water, wastewater and stormwater infrastructure and water quality protection projects. Also included in the STAG account as a separate line item is $20,000,000 for the United States-Mexico Border Program. The Joint Explanatory Statement for the FY 2009 Appropriations Act identifies two projects to be funded directly from the line item for the United States-Mexico Border Program: "From within the amount provided for the Mexican Border program, $2,500,000 is directed to El Paso and Brownsville, Texas as in prior years." The FY 2009 Appropriations Act also contains a rescission of $10,000,000 from the STAG appropriation account. The Joint Explanatory Statement directs the Agency to take a portion of the rescission from "[b]alances from special project grants appropriated in fiscal year 2002 or earlier that have not been obligated on an approved grant as of July 1, 2009."

The specific requirements governing the award of the special projects and programs are contained in the following documents: the FY 2009 Appropriations Act and the Joint Explanatory Statement for Division E of the FY 2009 Appropriations Act – Department of the

Region 5	143	MI	The City of Mason, Water Treatment Plant	$500,000	$485,000
	144	MI	The City of Port Huron for a combined sewer overflow control project	$300,000	$291,000
	145	MI	Office of the Oakland County Drain Commissioner, Evergreen-Farmington Sanitary Sewer Improvements	$500,000	$485,000
	146	MI	Wayne County, Rouge River National Wet Weather Demonstration Project	$500,000	$485,000
	147	MN	The City of Minneapolis for combined sewer overflow improvements	$300,000	$291,000
	148	MN	The City of Willmar for wastewater treatment plant relocation project	$300,000	$291,000
	149	MN	Grand Rapids Public Utilities Commission, Grand Rapids Wastewater Treatment Plant	$750,000	$728,000
	209	OH	The City of Barberton, Wolf Creek Dam Intake Valve and Enclosure Replacement	$400,000	$388,000
	210	OH	The City of Defiance for a combined sewer overflow elimination project	$300,000	$291,000
	211	OH	Erie County, Wastewater Improvements	$500,000	$485,000
	212	OH	Metropolitan Sewer District of Greater Cincinnati, Eastern/Delta Sewer Separation Project	$500,000	$485,000
	213	OH	Northeast Ohio Regional Sewer District for a wastewater improvements project	$300,000	$291,000
	214	OH	The Community Improvement Corporation of Springfield and Clark County, Prime Ohio II Industrial Park	$500,000	$485,000
	215	OH	The Village of Cadiz, Wastewater Infrastructure Improvements	$350,000	$340,000
	299	OH	Ohio River Sanitation Commission for organic detection system improvements	$1,000,000	$970,000
	287	WI	The City of Madison drinking water system improvements	$300,000	$291,000
	288	WI	The City of Nekoosa, Wastewater Treatment Facility	$1,225,000	$1,189,000
	289	WI	The City of Waukesha for drinking water system improvements	$300,000	$291,000
	290	WI	Cumberland Municipal Utility, Water Infrastructure Improvements	$500,000	$485,000
	291	WI	Heart of the Valley Metropolitan Sewage District for wastewater system improvements	$300,000	$291,000
	292	WI	Metropolitan Milwaukee Sewer District for central sewer system improvements	$300,000	$291,000
	293	WI	The Village of Biron, Water and Sanitary Sewer Infrastructure	$1,225,000	$1,189,000
				$18,250,000	$17,707,000
Region 6	13	AR	The City of Fayetteville wastewater system improvements	$300,000	$291,000
	14	AR	The City of Heber Springs, West End Sewer Project	$335,000	$325,000
	15	AR	The City of Warren, Water and Sewer Extension along Northeast Bypass	$330,000	$321,000
	16	AR	Ozark Mountain Regional Public Water Authority in Marshall for drinking water system improvements	$300,000	$291,000
	119	LA	The City of East Baton Rouge for sewer system improvements	$300,000	$291,000
	120	LA	The City of Houma for construction of water distribution system	$300,000	$291,000
	121	LA	The City of Leesville for a sewer system expansion project	$400,000	$388,000
	122	LA	The City of Monroe, Monroe Wastewater Treatment System	$500,000	$485,000
	123	LA	The Town of Golden Meadow for storm water system improvements	$400,000	$388,000
	190	NM	Bernalillo County for the Valley Utilities wastewater project	$1,100,000	$1,067,000
	191	NM	The City of Aztec for wastewater treatment plant improvements project	$500,000	$485,000
	192	NM	The City of Bloomfield for water system improvements	$300,000	$291,000
	193	NM	The City of Espanola, Drinking Water Improvements	$700,000	$679,000
	216	OK	Ada Public Works Authority, Wastewater Lift Station	$500,000	$485,000
	217	OK	The City of McAlester for water treatment plant rehabilitation project	$300,000	$291,000
	253	TX	The City of Alvarado, Sanitary Sewer Improvements	$250,000	$243,000
	254	TX	The City of Austin for sewer rehabilitation project	$300,000	$291,000
	255	TX	The City of Bryan, West Bryan Wastewater Treatment Plant	$500,000	$485,000
	256	TX	The City of Cotulla, Cotulla Wastewater Infrastructure System Repairs	$500,000	$485,000
	257	TX	The City of Goliad, Wastewater Treatment Facility Improvements	$200,000	$194,000
	258	TX	The City of Hondo, Sanitary Sewer Overflow Initiative	$253,000	$246,000

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Shannon Jones	Water and Sewer	Utilities
Submitted By	**Division**	**Department**

Action Required:

Resolution approving a task order to the contract with Insituform Technologies, Inc. for $300,000 with a contingency of $30,000 for cured-in-place sanitary sewer linings.

$ 330,000.00	$ 3,470,043.00	Sanitary Sewer Rehabilitation
Cost of this request	Category / Project Budget	Program Category / Project Name
5400.5700.5815.00	$ 640,804.09	Water and Wastewater
Account Number	Funds Used to Date	Program / Project Category Name
02017.0009	$ 2,829,238.91	Water/Sewer
Project Number	Remaining Balance	Fund Name

Budgeted Item XX **Budget Adjustment Attached**

Department Director	18 Sep 09 Date	Previous Ordinance or Resolution #	104-08
City Attorney	9/22/09 Date	Original Contract Date:	5/20/2008
Finance and Internal Services Director	9/23/09 Date	Original Contract Number:	2040
Chief of Staff	9/23/09 Date	Received in City Clerk's Office	ENTERED 9-21-09 KJ
Mayor	9/22/09 Date	Received in Mayor's Office	ENTERED 9/22/09 BB

Comments:

Fayetteville
ARKANSAS

City Council Meeting of October 6, 2009

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: David Jurgens, Public Utilities Director
Don Marr, Chief of Staff

From: Shannon Jones, Water & Wastewater Engineer

Date: September 18, 2009

Subject: Resolution approving a task order to the contract with Insituform Technologies, Inc. for $300,000 with a contingency of $30,000 for cured-in-place sanitary sewer linings.

RECOMMENDATION

Fayetteville City Administration recommends approving a task order to the contract with Insituform Technologies, Inc. for $300,000 with a contingency of $30,000 for cured-in-place sanitary sewer linings.

BACKGROUND

On May 20, 2008 the City awarded a contract to Insituform Technologies for sanitary sewer main line and service lateral lining based on a bid in which Insituform was 7.3% below the second bid. The bid schedule includes specific unit prices for various items of work; with the sanitary sewer rehabilitation program then using the pricing to complete the annual rehabilitation program. The exact needs of each rehabilitation activity generally cannot be specifically defined until the final design is completed, hence the unit price bid schedule to correlate costs to project scopes. This contract allows for multiple work orders to be issued for up to five years.

DISCUSSION

The contract allows for a limited price adjustment each year. Due to economic conditions and as the exact lines to be relined have been identified in advance, Insituform has agreed to **reduce** the price 4.2%. This decrease is not only being applied to this work order, but also to the previous work order issued in March, 2009. Combining the work under the two work orders creates a total savings of $26,400 compared to the already low price presented in the bid.

Pipes being lined under this contract have been identified by City forces through normal maintenance operations and by RJN Group, Inc. that recently completed a Sanitary Sewer Evaluation Study in the South Fayetteville and Greenland areas. City Staff has prepared the work order to release to Insituform, thus minimizing engineering and administrative costs. This work is an integral part of the City's ongoing program to maintain its sewer system in the most long-term yet cost effective fashion, with cured-in-place linings being by far the lowest cost strategy for applications where it is appropriate.

BUDGET IMPACT

The City received a 2008 State Tribal Assistance Grant in the amount of $286,000 that will be applied towards this project. The City's cost from Water/Sewer revenues will be $344,000. Funds are available in the 2009 Sanitary Sewer Rehabilitation Project budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING A TASK ORDER TO THE CONTRACT WITH INSITUFORM TECHNOLOGIES, INC. IN THE AMOUNT OF $300,000.00 FOR CURED IN-PLACE SANITARY SEWER MAIN LINE LININGS,; AND APPROVING A CONTINGENCY IN THE AMOUNT OF $30,000.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a Task Order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer linings.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a contingency in the amount of $30,000.00.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under $2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:

Date: **9/18/2009**

P.O Number:

Expected Delivery Date:

Vendor #: **1454**

Vendor Name: **Insituform Technologies**

Mail Yes:__ No: XX

Address: **PO Box 842358**

Fob Point: **Fayetteville, AR**

Taxable Yes:__ No: XX

Quotes Attached Yes:_____ No:_____

City: **Dallas**

State: **TX**

Zip Code: **75284-2359**

Ship to code:

Division Head Approval:

Requester: **Shannon Jones/Cheryl Partain**

Requester's Employee #: **2689**

Extension:

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	**2009 Cured In Place Lining per Term Contract**	**1**		**300,000.00**	**$300,000.00**	**5400-5700-5815.00**	**02017-0009**		
2					**$0.00**				
3					**$0.00**				
4					**$0.00**				
5					**$0.00**				
6					**$0.00**				
7					**$0.00**				
8					**$0.00**				
9					**$0.00**				
10					**$0.00**				
*	Shipping/Handling		Lot		**$0.00**				

Special Instructions:

Contract # 2040

Subtotal: **$300,000.00**

Tax: **$0.00**

Total: **$300,000.00**

Approvals:

Mayor: _____

Department Director: _____

Purchasing Manager: _____

Finance & Internal Services Director: _____

Budget Manager: _____

IT Manager: _____

Dispatch Manager: _____

Utilities Manager: _____

Other: _____

Revised 1/2/2008

5.0 CONTRACT AND BOND DOCUMENTS

5.1 AGREEMENT

2008 ANNUAL SANITARY SEWER MAINLINE AND SERVICE LATERAL REHABILITATION, CURED IN PLACE PIPE METHOD

THIS AGREEMENT, made this 20th day of May, 2008, by and between the City of Fayetteville, Arkansas, and

Insituform Technologies, Inc.
doing business as a Corporation, hereinafter called "Contractor",

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the projects selected for rehabilitation under this Term Maintenance Contract at the City of Fayetteville, Arkansas and all incidental and ancillary work in accordance with the conditions and at the prices stated in the Bid Proposal which are a part of these Contract Documents attached hereto and made a part hereof.

2. The Contractor will furnish all materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the projects selected for rehabilitation.

3. The Contractor will commence the work required under this term maintenance contract for the rehabilitation of sanitary sewer mainlines throughout Fayetteville, Arkansas in a timely manner as projects are selected. The Contractor shall furnish City of Fayetteville a timeline for each project as preparation for the work begins.

4. The timeline for this contract shall end December 31, 2008. Upon approval of the City of Fayetteville, the contract may be extended on a yearly basis for up to four years, through December 31, 2012.

5. The Contractor shall be entitled to receive up to Three Hundred Thousand Dollars ($330,000). City of Fayetteville is under no obligation to purchase a minimum amount of any item awarded and City of Fayetteville may choose to purchase more, less, or none of the rehabilitation, depending upon its needs. This contract is generally for miscellaneous and unidentified rehabilitation of sanitary sewer mains and service connections using the cured-in-place pipe method. The City of Fayetteville will pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts, as required by the Contract Documents.

6. The Contractor agrees to perform the work described in the Contract Documents and comply with the terms therein for the amounts shown in the Bid Proposal.

7. The term "Contract Documents" means and includes the Advertisement for Bids, Information for Bidders, Technical Specifications, Bid Proposal, Agreement, General Conditions, Performance Bond, Payment Bond, Notice of Award, Notice to Proceed, Change Orders and Addenda prepared or issued by the City of Fayetteville.

8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

9. It is mutually agreed that should it appear to the City of Fayetteville or to the Authorized Agent in charge, at any time during the existence of this Contract, that the sureties on the Contractor's bond have become insolvent, bankrupt, or otherwise financially unable to protect the City of Fayetteville under the terms of the Contract, the City of Fayetteville may demand the Contractor furnish additional security in some approved surety company satisfactory to the City of Fayetteville. The acts of the City of Fayetteville or the Agent with reference to demanding new or additional security shall never be construed to relieve the original sureties of their obligations under the contract, or to relieve the Contractor. The City of Fayetteville may stop performance under the Contract until additional security has been furnished by the Contractor, and the City of Fayetteville shall in no case be liable to the Contractor on account thereof. In the event of the refusal or failure of the Contractor to comply with the demands of the City of Fayetteville with reference to furnishing additional security, the City of Fayetteville may exercise its right as provided herein to stop all payments under the Contract and to arrange for completion of the Contract requirements obligating the Contractor for any and all additional expenses incurred.

10. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City council **in advance** of the change in scope, cost or fees.

11. City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in four (4) counterparts, each of which shall be deemed an original on the date first above written.

THE CITY OF FAYETTEVILLE

By: _____
Title: Mayor
113 West Mountain Street
Fayetteville, AR 72701

Attest: _____
Title:

CITY CLERK/TREASURER CITY OF FAYETTEVILLE ARKANSAS WASHINGTON COUNTY

CONTRACTOR:

By: _____
H. Douglas Thomas
Title: V.P.-Global Procurement/Ops. Support

*Attest: _____
Joann Smith
Title: Contracting & Attesting Officer

Company Insituform Technologies, Inc.

(Corporate Seal)

Address 17988 Edison Avenue

Chesterfield, MO 63005

*If a corporation, the Secretary of the Corporation should Attest.

2008 CIPP Bid Tabulation
April 16, 2008 at 2:00 p.m.

				Insituform Technologies		Suncoast Infrastructure	
Item No.	Item Description	Approx. Qty.	Unit	Unit Price In Figures	Total	Unit Price In Figures	Total
1	6" x 4.5mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	3500	LF	$ 36.50	$ 127,750.00	$ 30.60	$ 107,100.00
2	8" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	1500	LF	$ 32.00	$ 48,000.00	$ 30.30	$ 45,450.00
3	10" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	500	LF	$ 34.00	$ 17,000.00	$ 31.00	$ 15,500.00
4	12" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	500	LF	$ 42.00	$ 21,000.00	$ 32.80	$ 16,400.00
5	15" x 7.5mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	100	LF	$ 57.00	$ 5,700.00	$ 50.00	$ 5,000.00
6	18" x 9mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place	100	LF	$ 73.00	$ 7,300.00	$ 60.50	$ 6,050.00
7	Internal reinstatement of Service Laterals	60	EA	$ 0.01	$ 0.60	$ 150.00	$ 9,000.00
8	Trenchless rehabilitation by CIPP of existing 4" Service Lateral	30	EA	$ 2,000.00	$ 60,000.00	$ 2,900.00	$ 87,000.00
9	Standard Mobilization (within 15 working days)	2	EA	$ 2,000.00	$ 4,000.00	$ 2,500.00	$ 5,000.00
10	Emergency Mobilization (within 3 working days)	1	EA	$ 3,000.00	$ 3,000.00	$ 9,060.00	$ 9,060.00
11	CIPP Point Repair, 6" - 12" Diameter, 10 LF	5	EA	$ 1,000.00	$ 5,000.00	$ 3,320.00	$ 16,600.00
	Total Bid				**$ 298,750.60**		**$ 322,160.00**

4.0 BIDDER'S PROPOSAL

4.1 ITEMIZED DESCRIPTION OF BID PRICING

TO: City of Fayetteville
Fayetteville, Arkansas

GENTLEMEN:

The undersigned bidder, having examined the specifications and contract documents, and being fully advised as to the extent and character of the work, propose to furnish all equipment and to perform all labor and work necessary for the completion of the work described by and in accordance with the specifications and contracts for the following prices to wit.

Item No.	Item Description	Approx. Qty.	Unit	Unit Price In Figures	Total
1	6" x 4.5mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	THIRTY SIX DOLLARS AND ~~dollars &~~ FIFTY CENTS	3500	LF	$ 36.50	$ 127,750.00
2	8" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	THIRTY TWO dollars & ZERO CENTS	1500	LF	$ 32.00	$ 48,000.00
3	10" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	THIRTY FOUR dollars & ZERO CENTS	500	LF	$ 34.00	$ 17,000.00
4	12" x 6.0mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	FORTY TWO dollars & ZERO CENTS	500	LF	$ 42.00	$ 21,000.00

Item No.	Item Description	Approx. Qty.	Unit	Unit Price In Figures	Total
5	15" x 7.5mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	FIFTY SEVEN dollars & ZERO CENTS	100	LF	$ 57.00	$ 5,700.00
6	18" x 9mm trenchless rehabilitation by CIPP of existing sewer pipe mainline, complete in place				
	SEVENTY THREE dollars & ZERO CENTS	100	LF	$ 73.00	$ 7,300.00
7	Internal reinstatement of Service Laterals				
	ONE CENT ~~dollars~~	60	EA	$ .01	$ .60
8	Trenchless rehabilitation by CIPP of existing 4" Service Lateral				
	TWO THOUSAND dollars & ZERO CENTS	30	EA	$ 2000.00	$ 60,000.00
9	Standard Mobilization (within 15 working days)				
	TWO THOUSAND dollars & ZERO CENTS	2	EA	$ 2000.00	$ 4,000.00
10	Emergency Mobilization (within 3 working days)				
	THREE THOUSAND dollars & ZERO CENTS	1	EA	$ 3000.00	$ 3,000.00
11	CIPP Point Repair, 6" - 12" Diameter, 10 LF				
	ONE THOUSAND dollars & ZERO CENTS	5	EA	$ 1000.00	$ 5,000.00

TOTAL BID AMOUNT $ 298,750.60

TWO HUNDRED NINTY EIGHT THOUSAND, SEVEN HUNDRED FIFTY DOLLARS AND SIXTY CENTS

(In Writing)

The undersigned understands that this bid is for a term maintenance contract for the rehabilitation of sanitary sewer mainlines throughout Fayetteville, Arkansas and that the City here may choose to purchase more, less, or none of the rehabilitation, depending upon its needs. The City is under no obligation to purchase a minimum amount of any item awarded. This contract is generally for miscellaneous and unidentified rehabilitation of sanitary sewer mains and service connections using the cured-in-place pipe method.

The bidder understands that the City reserves the right to reject any or all bids, and to waive informalities in the bidding.

The undersigned further agrees that the proposal guaranty may be retained by the City of Fayetteville, Arkansas, provided the undersigned is one of the lowest and most advantageous bidders, and that said proposal guaranty shall remain with the City until the contract has been signed, and the bond required for the faithful performance of the contract has been made by one of the lowest responsible bidders; otherwise, proposal guaranty may be obtained from the City after forty-eight hours from the time of opening of the bids.

The undersigned hereby declares that he has had sufficient time to make all test and investigations to arrive at an intelligent estimate of the cost of doing the work, and has carefully examined the specifications and documents relating to the work covered by his bid or bids, that he agrees to do the work, and that no representation made by the City are in any sense a warranty, but are mere estimates for guidance of the CONTRACTOR.

Upon receipt of notice of the acceptance of the bid, we will execute the formal contract attached in quintuplicate, within ten days, and will deliver a Surety Bond for the faithful performance of the contract, and such other bonds as may have been required in the specifications. The bid security attached in the sum of 5%of the greatest amount of the total bid is ($5%) is to become the property of the City if a cashier's check, and if a bond, the principal amount shall be paid to the City of Fayetteville, in the event the contract and bond are not executed within the time set forth, and to be considered as liquidated damages because the delay and additional work caused thereby are incapable of accurate ascertainment.

RESPECTFULLY SUBMITTED: Insituform Technologies, Inc.

Bidder _____ SIGNATURE AND TITLE

H. Douglas Thomas
V.P.-Global Procurement/Ops.Support

_____ SIGNATURE AND TITLE

Seal (if bidder is a corporation)

Business Address 17988 Edison Avenue

Chesterfield, MO 63005

Telephone Number 636-530-8000

FAX Number 636-530-0751

Arkansas Contractors License Number 0072030409

NOTE: DO NOT DETACH BID FROM OTHER PAPERS BOUND IN THIS DOCUMENT. Fill Bid Form in with ink and submit complete with all other papers bound in this document

Fayetteville, AR - 2009 CIPP Maintenance Contract

Street Name	Basin	Map Page	US MH	DS MH	GIS Length	Actual Length	Dia	Services City	Services Contractor	Unit Price	Extended Price	Actual Price
Line Work												
Rush	I-04		I-(04)132	I-(04)131	209.13		6		4	$ 34.75	$ 7,267.18	$ -
Rebecca / Fallin	I-11		I-(11)093	I-(11)092	88.43		8		2	$ 30.25	$ 2,674.98	$ -
Rebecca / Fallin	I-11		I-(11)094	I-(11)093	90.67		8		2	$ 30.25	$ 2,742.82	$ -
Rebecca / Fallin	I-11		I-(11)095	I-(11)094	99.74		8		2	$ 30.25	$ 3,017.14	$ -
Rebecca / Fallin	I-11		I-(11)092	I-(11)091	262.48		8		4	$ 30.25	$ 7,939.99	$ -
15th Trailer Park	W-15		W-(15)059P	W-(15)058P	203.63		6		5	$ 34.75	$ 7,076.22	$ -
Carolyn / Hammond	I-16		I-(16)257	I-(16)256	321.09		6		6	$ 34.75	$ 11,157.74	$ -
Carolyn / Hammond	I-16		I-(16)256	I-(16)255	228.79		6		3	$ 34.75	$ 7,950.49	$ -
Carolyn / Hammond	I-16		I-(16)227	I-(16)226	389.59		6		3	$ 34.75	$ 13,538.20	$ -
Carolyn / Hammond	I-16		I-(16)224	I-(16)223	349.62		6		3	$ 34.75	$ 12,149.13	$ -
North St / College Ave	I-10		I-(10)138	I-(10)131	198.00		6		1	$ 34.75	$ 6,880.39	$ -
Old Wire / Ash	I-09		I-(09)093	I-(09)092	402.82		12		1	$ 40.50	$ 16,314.26	$ -
Old Wire / Overcrest	I-09		I-(09)002A	I-(09)002	129.89		12		0	$ 40.50	$ 5,260.74	$ -
Old Wire / Overcrest	I-09		I-(09)002	I-(09)001	162.01		12		0	$ 40.50	$ 6,561.53	$ -
Old Wire / Overcrest	I-09		I-(09)001	I-(08)078	300.26		12		0	$ 40.50	$ 12,160.58	$ -
Old Wire / Overcrest	I-08		I-(08)078	I-(08)077	78.37		12		0	$ 40.50	$ 3,174.01	$ -
Old Wire / Overcrest	I-08		I-(08)077	I-(08)076	145.04		12		0	$ 40.50	$ 5,874.19	$ -
Old Wire / Overcrest	I-08		I-(08)076	I-(08)072	87.78		12		1	$ 40.50	$ 3,554.93	$ -
Old Wire / Overcrest	I-08		I-(08)072	I-(08)071	138.56		12		2	$ 40.50	$ 5,611.63	$ -
Old Wire / Overcrest	I-08		I-(08)071	I-(08)066	68.98		12		0	$ 40.50	$ 2,793.80	$ -
Old Wire / Overcrest	I-08		I-(08)066	I-(08)063	45.56		12		0	$ 40.50	$ 1,845.20	$ -
Old Wire / Overcrest	I-08		I-(08)063	I-(08)062	164.54		12		0	$ 40.50	$ 6,663.97	$ -
Old Wire / Pittman	I-09		I-(09)099	I-(09)098	125.56		12		0	$ 40.50	$ 5,085.18	$ -
Old Wire / Pittman	I-09		I-(09)098	I-(09)097	5.92		12		0	$ 40.50	$ 239.83	$ -
Rock	W-02		W-(02)181	W-(02)180	259.44		6		4	$ 34.75	$ 9,015.58	$ -
Linda Ln / Walnut	I-04		I-(04)047	I-(04)046	432.94		6		1	$ 34.75	$ 15,044.63	$ -
Leverett / Caraway	I-12		I-(12)080	I-(12)079	187.13		6		2	$ 34.75	$ 6,502.77	$ -
Hartman / Palmer	W-13A		W-(13A)138	W-(13A)137	250.00		6		2	$ 34.75	$ 8,687.50	$ -
Hartman / Palmer	W-13A		W-(13A)137	W-(13A)136	291.00		6		2	$ 34.75	$ 10,112.25	$ -
Hartman / Palmer	W-13A		W-(13A)136	W-(13A)135	65.00		6		0	$ 34.75	$ 2,258.75	$ -
Woolsey / Greenvalley	I-13		I-(13)033	I-(13)032	364.00		6		5	$ 34.75	$ 12,649.00	$ -
Woolsey / Greenvalley	I-13		I-(13)032	I-(13)031	203.00		6		4	$ 34.75	$ 7,054.25	$ -
Woolsey / Greenvalley	I-13		I-(13)031	I-(13)030	238.00		6		5	$ 34.75	$ 8,270.50	$ -
Ramsey / Ash / Cypress	I-16		I-(16)189	I-(16)188	196.02		12		4	$ 40.50	$ 7,938.64	$ -
Ramsey / Ash / Cypress	I-16		I-(16)188	I-(16)187	125.62		12		0	$ 40.50	$ 5,087.72	$ -
Ramsey / Ash / Cypress	I-16		I-(16)187	I-(16)186	295.94		12		0	$ 40.50	$ 11,985.44	$ -
Ramsey / Ash / Cypress	I-16		I-(16)186	I-(16)185	269.87		12		1	$ 40.50	$ 10,929.65	$ -
Ramsey / Ash / Cypress	I-16		I-(16)185	I-(16)184	278.94		12		3	$ 40.50	$ 11,297.03	$ -
Ramsey / Ash / Cypress	I-16		I-(16)184	I-(16)183	373.79		12		4	$ 40.50	$ 15,138.68	$ -
Ramsey / Ash / Cypress	I-16		I-(16)183	I-(16)182	406.58		12		2	$ 40.50	$ 16,466.46	$ -
Ramsey / Ash / Cypress	I-16		I-(16)182	I-(16)181	388.68		12		0	$ 40.50	$ 15,741.70	$ -
Ramsey / Ash / Cypress	I-16		I-(16)181	I-(16)180	174.26		12		1	$ 40.50	$ 7,057.38	$ -
Winwood / Lisa / Kantz	I-16		I-(16)169	I-(16)168	148.45		12		0	$ 40.50	$ 6,012.37	$ -
Winwood / Lisa / Kantz	I-16		I-(16)168	I-(16)167	256.57		12		1	$ 40.50	$ 10,391.23	$ -
Winwood / Lisa / Kantz	I-16		I-(16)167	I-(16)166	143.33		12		0	$ 40.50	$ 5,804.85	$ -
Winwood / Lisa / Kantz	I-16		I-(16)166	I-(16)165	306.99		12		1	$ 40.50	$ 12,432.90	$ -
Winwood / Lisa / Kantz	I-16		I-(16)165	I-(16)164	197.25		12		0	$ 40.50	$ 7,988.66	$ -
Winwood / Lisa / Kantz	I-16		I-(16)164	I-(16)158	175.77		12		0	$ 40.50	$ 7,118.59	$ -
Winwood / Lisa / Kantz	I-16		I-(16)158	I-(16)157	151.85		12		1	$ 40.50	$ 6,149.80	$ -
Winwood / Lisa / Kantz	I-16		I-(16)157	I-(16)156	318.44		12		0	$ 40.50	$ 12,896.84	$ -
Winwood / Lisa / Kantz	I-16		I-(16)156	I-(16)155	135.45		12		0	$ 40.50	$ 5,485.74	$ -
Winwood / Lisa / Kantz	I-16		I-(16)155	I-(16)153	147.88		12		0	$ 40.50	$ 5,988.99	$ -
Winwood / Lisa / Kantz	I-16		I-(16)153	I-(16)149A	167.49		12		1	$ 40.50	$ 6,783.25	$ -
Cypress / Winwood	I-16		I-(16)177	I-(16)176	152.96		12		0	$ 40.50	$ 6,195.06	$ -
Cypress / Winwood	I-16		I-(16)176	I-(16)173	407.51		12		0	$ 40.50	$ 16,504.22	$ -
Cypress / Winwood	I-16		I-(16)173	I-(16)172	46.36		12		0	$ 40.50	$ 1,877.49	$ -
Cypress / Winwood	I-16		I-(16)172	I-(16)171	193.86		12		3	$ 40.50	$ 7,851.28	$ -
Cypress / Winwood	I-16		I-(16)171	I-(16)170	209.64		12		2	$ 40.50	$ 8,490.55	$ -
Cypress / Winwood	I-16		I-(16)170	I-(16)169	269.15		12		3	$ 40.50	$ 10,900.50	$ -
Emma	W-05		W-(05)021	W-(05)023	260.65		6		3	$ 34.75	$ 9,057.46	$ -
Haddon / Denver	W-05		W-(05)042	W-(05)041	400.60		6		4	$ 34.75	$ 13,920.85	$ -
Haddon / Denver	W-05		W-(05)043	W-(05)042	249.84		6		3	$ 34.75	$ 8,681.94	$ -
Haddon / Denver	W-05		W-(05)043A	W-(05)043	48.00		6		0	$ 34.75	$ 1,668.00	$ -
Haddon / Denver	W-05		W-(05)046	W-(05)045	248.03		6		2	$ 34.75	$ 8,619.04	$ -
Haddon / Denver	W-05		W-(05)047	W-(05)046	154.34		6		2	$ 34.75	$ 5,363.32	$ -
Haddon / Denver	W-05		W-(05)048	W-(05)047	306.83		6		3	$ 34.75	$ 10,662.34	$ -
Country Club	W-05		W-(05)078	W-(05)077	234.50		6		6	$ 34.75	$ 8,148.86	$ -
Club Oak	W-05		W-(05)093	W-(05)092	209.50		6		1	$ 34.75	$ 7,279.96	$ -
29th Circle	W-05		W-(05)120	W-(05)121	250.85		8		0	$ 30.25	$ 7,588.21	$ -
Whillock	W-06		W-(06)024	W-(06)023	320.00		6		5	$ 34.75	$ 11,119.99	$ -
Whillock	W-06		W-(06)026	W-(06)025	200.00		6		3	$ 34.75	$ 6,950.00	$ -
Hotz / Walton	W-13A		W-(13A)129	W-(13A)128	55.02		6		1	$ 34.75	$ 1,911.91	$ -
Hotz / Walton	W-13A		W-(13A)130	W-(13A)129	110.25		6		3	$ 34.75	$ 3,831.32	$ -
Hotz / Walton	W-13A		W-(13A)135	W-(13A)134	166.89		8		1	$ 30.25	$ 5,048.39	$ -
Garvin / Hotz	W-13A		W-(13A)147	W-(13A)145	155.13		6		2	$ 34.75	$ 5,390.60	$ -
Garvin / Hotz	W-13A		W-(13A)148	W-(13A)147	245.23		6		2	$ 34.75	$ 8,521.74	$ -
Willoughby	W-20		W-(20)007G	W-(20)007F	154.35		6		1	$ 34.75	$ 5,363.66	$ -
Butterfield Trail	W-20		W-(20)028	W-(20)027	224.00		6		1	$ 34.75	$ 7,783.98	$ -
Butterfield Trail	W-20		W-(20)029	W-(20)028	164.00		6		0	$ 34.75	$ 5,698.97	$ -
					16,683.61							
Taps									134	$ 0.01	$ 1.34	
										Mobilization	$ 2,000.00	
										Total	**$ 622,256.21**	**$ -**

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux	Aviation	Transportation
Submitted By	**Division**	**Department**

Action Required:

Approval and signature of the Mayor for Offer and Acceptance Contracts for land purchases in conjunction with the Runway 16 Safety Area Improvement project; Tract #5 - Standard Register Property $151,200, and Tract #2 - Coulson Properties, $40,200.

$ 191,400.00	$ 3,814,188.00	Correct Runway 16 RSA Phase III
Cost of this request	Category / Project Budget	Program Category / Project Name
5550.3960.7820.38	$ 3,259,525.00	Airport Capital Exp
Account Number	Funds Used to Date	Program / Project Category Name
07039 3	$ 554,663.00	Airport
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] **Budget Adjustment Attached** [ ]

Department Director — Date: 9-14-09

City Attorney — Date: 9/21/09

Finance and Internal Services Director — Date: 9/21/09

Chief of Staff — Date: 9-21-09

Mayor — Date: 9/21/09

Previous Ordinance or Resolution # 119-09

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED — 9/18/09

Received in Mayor's Office — ENTERED — 9/21/09

Comments:

Fayetteville
ARKANSAS

AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT ▪ DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gulley, Transportation Director

FROM: Ray M. Boudreaux, Aviation Director

DATE: September 11, 2009

SUBJECT: **Offer and Acceptance Contracts for Land purchases associated with the RSA 16 Improvement Project at Fayetteville Executive Airport, Drake Field**

RECOMMENDATION: Approve Offer and Acceptance Contracts for land purchases associated with the RSA 16 Improvement Project at Fayetteville Executive Airport, Drake Field. Signatures of the Mayor and City Clerk.

BACKGROUND: Offer and Acceptance Contracts were sent to the landowners for consideration last month. Standard Register and Coulson Properties have accepted the offer to purchase by the City of Fayetteville. Attached are their respective contract for action by the City Council and the Mayor and City Clerk.

DISCUSSION: The project is proceeding with work being done on the Ernest Lancaster ditch crossing. The Kearney Power/Cooper Electric property purchase is pending and will be submitted at a later date.

BUDGET IMPACT: This project is fully funded 95% FAA/AIP and 5% Arkansas Department of Aeronautics.

Attachments: Staff Review
Coulson Properties Offer and Acceptance Contract (2 copies)
Standard Register Offer and Acceptance Contract (2 copies)

4500 SOUTH SCHOOL AVENUE, SUITE F ▪ AIRPORT TERMINAL BUILDING ▪ FAYETTEVILLE AR 72701
479.718.7642 ▪ 479.718.7646 FAX ▪ www.accessfayetteville.org/government/aviation
airport_economic_development@ci.fayetteville.ar.us

RESOLUTION NO. _____

A RESOLUTION APPROVING OFFER AND ACCEPTANCE CONTRACTS BETWEEN THE CITY OF FAYETTEVILLE AND THE STANDARD REGISTER COMPANY AND COULSON PROPERTIES LIMITED PARTNERSHIP FOR THE PURCHASE OF LAND NEEDED FOR THE RUNWAY 16 SAFETY AREA IMPROVEMENT PROJECT; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SAID AGREEMENTS.

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 Offer and Acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project. Copies of the contracts are attached hereto marked Exhibit "A" and "B" respectively, and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor and City Clerk to execute said agreements.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

OFFER AND ACCEPTANCE CONTRACT FOR TRANSFER OF REAL PROPERTY IN LIEU OF CONDEMNATION

This OFFER AND ACCEPTANCE CONTRACT (the "**Agreement**") is made effective as of September __, 2009, between the CITY OF FAYETTEVILLE, ARKANSAS, a municipal corporation ("**Purchaser**") and THE STANDARD REGISTER COMPANY, and Ohio corporation ("**Seller**").

1. **Property**: Purchaser agrees to purchase approximately 3.4 acres of land in Fayetteville, Washington County, Arkansas, as more fully described on the attached Exhibit A (the "**Property**"), on the terms and conditions of this Agreement (in lieu of exercising rights to acquire the property through eminent domain).

2. **Purchase Price**: Purchaser shall pay $151,200.00 (including $4,218.00 for a temporary construction easement) (the "**Purchase Price**") to Seller in cash at "Closing" (defined in Section 8). The Purchase Price is based on the "Salient Facts and Conclusions" attached as Exhibit B.

3. **Condition to Closing**: Purchaser's obligation to complete the Closing is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, but there are no other conditions to Closing. If the City Council approves the Agreement, Purchaser will be unconditionally obligated to complete the transaction on the terms and conditions of this Agreement.

4. **Deed**. Conveyance will be made to Purchaser by a Special or Limited Warranty Deed (or the Arkansas equivalent), subject to the "Permitted Exceptions" (defined below). Such conveyance shall include mineral rights owned by Seller in connection with the Property.

5. **Title / Permitted Exceptions**. Purchaser confirms that it has examined title to the Property and it agrees to accept title to the Property subject to all easements, rights of way, covenants, restrictions and other encumbrances of record, if any, except mortgages and liens (the "**Permitted Exceptions**").

6. **Survey**. Purchaser confirms that it has surveyed the Property, and it agrees to accept title to the Property subject to all matters shown in the survey. A copy of the survey is attached as Exhibit C.

7. **Taxes**. Seller will be responsible for all taxes and special assessments due on or before the Closing date.

8. **Closing**. The closing of the purchase of the Property (the "**Closing**") shall take place on the 30th day after this Agreement is approved by the City Council. If such date of Closing falls on a weekend or holiday, it will be held the following working day. The parties will conduct the Closing through escrow, by delivering all funds and documents to the Escrow Agent or to any other entity selected by mutual agreement of the parties (the "**Closing Agent**").

9. **Transfer of Possession / No Warranties**. Possession of the Property shall be delivered to Purchaser on the date of Closing in "AS-IS, WHERE-IS" condition, with all faults and without recourse to the Seller. Seller makes no covenant, representation or warranty, whether express or implied, and Seller specifically disclaims any and all representations and warranties with respect to the Property including but not limited to matters pertaining to: (i) the physical condition of the Property; or (ii) the suitability of the Property for any use; or (iii) environmental conditions.

10. **Purchaser's Commitment**. As a material inducement to Seller to enter into and perform this Agreement, Purchaser covenants and agrees as follows:

    (a) Purchaser will construct the improvements commonly known as the "Runway 16 Safety Area Improvement Project" including the improvements to and realignment of US Highway 71, substantially as shown on the attached Exhibit D (the "**Project**");

(b) As a part of the Project, Purchase will remove certain existing improvements on the Property; and Purchaser covenants and agrees to repair and replace the affected portions of all such improvements on Seller's remaining property, including but not limited all affected portions of the security fencing, concrete drive, asphalt driveways and parking areas on Seller's remaining property (making modifications as appropriate to account for the removal of the improvements on the Property). Purchaser covenants and agrees that all such work will be performed as necessary to assure that the items repaired or replaced are in a condition that is substantially the same as, or better than, their condition before the Closing date.

(c) Purchaser will construct the Project in a manner designed and implemented to minimize disruption to Seller's business operations.

(d) During construction of the Project, Seller's existing ingress, egress and access to US Highway 71 will not be restricted on more than two occasions, for a maximum of one hour each time (and Purchaser will give Seller at least five business days advance written notice before any such restriction occurs); and

(e) Upon completion of the Project, Seller will continue to have access to US Highway 71, at the access point (with the curb cuts) shown in Exhibit D.

11. **Personal Property**. There are no structures on the Property. But, to the extent it contains improvements of any kind, they are included in the Purchase Price and transferred to Purchaser at Closing.

12. **Casualty and Loss.** Risk of loss or damage to the property by fire or other casualty occurring up to the time of Closing is assumed by Seller.

13. **Environmental Conditions**. Purchaser acknowledges that it has conducted due diligence regarding the Property prior to the date of this Agreement, including but not limited to the environmental condition and quality of the Property, and that all such investigations have been satisfactory to Purchaser in all respects. Purchaser has obtained and reviewed an Environmental Impact Statement, prepared for Purchaser, at Purchaser's expense and determined that no further investigation or testing is required, and Purchaser accepts the environmental condition of the Property.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of Arkansas.

15. **Entire Agreement.** This Agreement, when executed by both the Purchaser and Seller contains the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

16. **Post-Closing Obligations.** Purchaser's acceptance of the Deed will extinguish this Agreement by operation of merger and therefore neither party will have any obligation under this Agreement from and after the Closing; except as follows: (a) Purchaser's commitment in Section 10 is a binding obligation which will survive the Closing until it has been fully performed and completed; and (b) Seller's obligation in the Temporary Construction Easement attached as Exhibit E is a binding obligation which will survive the Closing until the portion of the Project being performed adjacent to Seller's property has been fully performed and completed.

17. **Presentation to City Council.** The Purchaser shall submit this fully executed Agreement to the City Council for their approval within 30 days after the effective date written above.

18. NOTICE: THE PURCHASER ASSERTS AND THE SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER

OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID.

19. **Notices**. Each notice required under this Agreement will be in writing and will be deemed to have been duly given on the date the notice is either delivered personally, or mailed by overnight or same-day express mail delivery service, or transmitted by facsimile or e-mail; except that a notice transmitted by facsimile or e-mail will not be effective until the addressee (or the attorney for the addressee) transmits a facsimile or e-mail acknowledging receipt of the notice or until a hard copy is delivered by any other means authorized in this Agreement. Notices must be delivered to the following addresses:

To Purchaser: _____
_____
_____
_____

With a copy to: _____
_____
_____
_____

To Seller: The Standard Register Company
600 Albany Street
Dayton, Ohio 45408
Attn: _____
Phone: _____
Facsimile: _____
E-Mail: _____

With a copy to: Dinsmore & Shohl LLP
One Dayton Centre
One South Main Street
Suite 1300
Dayton, Ohio 45402
Attn: Merideth Ann Trott
Phone: (937) 449-6400
Fax: (937) 449-6405
E-Mail: trott@dinslaw.com

20. **Counterparts.**

This Agreement and the signatures on this Agreement may be transmitted by facsimile or e-mail. Any properly transmitted signature will be deemed to constitute an original signature and counterparts of this Agreement containing (actual or deemed) original signatures of both parties will be deemed to constitute a single, enforceable contract.

See next pages for signatures

THE STANDARD REGISTER COMPANY

By: _____ Date: Sept. 11, 2009

Name: Robert M. Ginnan

Title: Vice President, Treasurer & CFO

ACKNOWLEDGMENT

STATE OF OHIO)
) ss.
COUNTY OF MONTGOMERY)

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 Robert M. Ginnan, to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/she/they is/are VP, Treas., CFO of **The Standard Register Company** and is/are duly authorized to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he/she/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 11 day of September, 2009.

Barbara J. Widera
Notary Public

MY COMMISSION EXPIRES:

BARBARA J. WIDERA, Notary Public
In and for the State of Ohio
My Commission Expires August 3, 2013

CITY OF FAYETTEVILLE, ARKANSAS,

A municipal corporation

_____ Date: _____
Lioneld Jordan, Mayor

_____ Date: _____
Sondra Smith, City Clerk

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **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 September, 2009.

_____
Notary Public

MY COMMISSION EXPIRES:

_____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

DRAKE FIELD / HWY 71B

Tract No. 5
Parcel No. 765-15531-000

PROPERTY DESCRIPTION:

(Deed Record 491-19)

A part of the NW ¼ of the SW ¼ of Section 33, T-16-N, R-30-W, Washington County, Arkansas being more particularly described as follows: From the Southwest corner of said Section 33, thence along the West line of said Section 33 North 3°00'52" East - 1314.91 feet to the SW corner of said NW ¼ of the SW ¼, thence along the South line of said NW ¼ of the SW ¼ South 87°05'37" East – 859.46 feet to the POINT OF BEGINNING, thence North 25°26'21" East - 88.92 feet; thence North 70°26'21" East - 56.57 feet; thence North 25°26'21" East – 756.75 feet; thence North 15°09'32" East - 157.01 feet to a point on the West Right of Way line U.S. Highway 71; thence along said West Right of Way line South 4°35'50" West - 487.71 feet; thence continuing along said West line North 85°24'10" West - 10.00 feet; thence continuing along said West line South 4°35'50" West - 469.17 feet to a point on the South line of the NW ¼ of the SW ¼ of said Section 33; thence along said South line North 87°05'37" West – 371.44 feet to the POINT OF BEGINNING, containing 3.42 acres, more or less.

EXHIBIT "B"
SALIENT FACTS AND CONCLUSIONS
(including appraisal)

[Attached]

Section I – Introduction

Salient Facts & Conclusions

Project Identification:	City of Fayetteville Executive Airport, Drake Field - Runway 16 Safety Area Improvement Project
Fee Simple Owner:	Standard Register Company
Mailing Address:	600 Albany Street – Dayton, OH 45408-1442
Property Location:	Project Tract #5 3655 South School Avenue – Fayetteville, AR 72701
Parcel Numbers:	Washington County - 765-15531-000
Census Tract:	111.02, Block 7026
Flood Data:	~60% total acreage appears to lie in FEMA identified flood zone A Per map #05143C0220F, as of 05/16/08
Estate Appraised:	Fee Simple
Highest & Best Use:	**Before the Taking –** As if Vacant — Industrial Manufacturing Complex As Improved — " **After the Taking –** As if Vacant — Industrial Manufacturing Complex As Improved — "
Improvements Considered:	Due to my opinion improvements remaining after proposed partial taking will not suffer severance damage, they are not considered in this report. Those items slated for permanent removal and therefore considered include: Security fencing - 200± linear feet, net loss after replacement Concrete drive - 4,200± square feet Asphalt drive/parking - 2,300± square feet Miscellaneous - Landscaping (included in land value), signage, etc.
Area Of Whole:	38.82± Acres per provided Survey
Permanent Taking Area:	3.42± Acres per provided Survey
Area Of Residual:	35.40± Acres
Temporary Construction:	1.11± Acres per provided Survey
Effective Date:	June 29, 2009 – the date of subject inspection

Salient Facts And Conclusions Continued

Indicated Fair Market Values

Before the Takings		
Underlying Land	$1,475,900	
Affected Improvements	$ 17,020	
Total		$1,492,020
After the Takings		
Underlying Land	$1,345,040	
Affected Improvements	0	
Total		$1,345,040
Total Loss in Market Value Due to Taking		**$ 146,980**

***No Severance Damages applicable**

Allocation Of Fair Market Value

Permanent Taking:	3.42± Acres @ $38,000/Acre			=	$129,960
Affected Improvements (depreciated cost):					
Security fencing -	200± linear feet	@	$6.50	=	$ 1,300
Concrete drive -	4,200± SF	@	$2.60	=	$ 10,920
Asphalt drive/parking -	2,300± SF	@	$1.00	=	$ 2,300
Miscellaneous -	Signage, etc.				$ 2,500
Total Loss In Market Value Due to Taking					**$146,980**
Add T.C.E.	1.11± Acre @ $38,000/Acre x 10% x 1 Year			=	**$ 4,218**
Total Certified Just Compensation					**$151,198**

Say $151,200

U.S. Department of Transportation
Federal Aviation Administration

CERTIFICATE OF APPRAISER

Airport	Project Number	Parcel No.
EXECUTIVE AIRPORT DRAKE FIELD	3-05-0020-038-2009	765-15531-000
	Project Location: FAYETTEVILLE, AR	

I hereby certify:

That on JULY 7, 2009 (date) (s), I personally made a field inspection of the property herein appraised and that I have afforded the property owner the opportunity to accompany me at the time of inspection. I have also personally made a field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal or in the data book or report that supplements the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal attached hereto are true and the information contained therein upon which the opinion of value expressed below is based is correct, subject to the limiting conditions set forth in the appraisal.

That I understand this market value appraisal is to be used in connection with the acquisition of land for an airport project by CITY OF FAYETTEVILLE DRAKE FIELD with the assistance of FAA funds or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations, policies, and procedures applicable to appraisal of land for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within reasonable control of the owner, has been disregarded in determining the compensation for the property.

That neither my employment nor my compensation for making this appraisal are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated, future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said Airport or officials of the Federal Aviation Administration and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the conclusion set forth in this appraisal is my independent opinion of the value of the property as of the 29 TH day of JUNE 19 ____, and that such conclusion was reached without collaboration or direction as to value. 2009

It is my opinion that the fair market value of the above captioned real property is as follows:

Value before acquisition	$ 1,492,020
Value after acquisition	$ 1,340,822
Value difference	$ 151,198

The property has been appraised for its fair market value as though owned in fee simple, or as encumbered only by the existing easement in favor of _____

The opinion of value expressed above is the result of and is subject to the data and conditions described in detail in this report of 93 pages.

Date of contract 06/17/09

Typed name MARK E. BISK

Signature [signature]

Date 8/3/09

STATE CERTIFIED GENERAL No. CG0202 MARK E. BISK

Note. - Other statements, required by the regulations of an appraisal organization of which the appraiser is a member or by circumstances connected with the appraisal assignment or the preparation of the appraisal, may be inserted where appropriate.

U.S. Department of Transportation
Federal Aviation Administration

CERTIFICATE OF APPRAISER

Airport	Project Number	Parcel No.
EXECUTIVE AIRPORT DRAKE FIELD	3-05-0020-038-2009	765-15531-000
	Project Location: FAYETTEVILLE, AR	

I hereby certify:

That on JUNE 29, 2009 (date) (s), I personally made a field inspection of the property herein appraised and that I have afforded the property owner the opportunity to accompany me at the time of inspection. I have also personally made a field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal or in the data book or report that supplements the appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal attached hereto are true and the information contained therein upon which the opinion of value expressed below is based is correct, subject to the limiting conditions set forth in the appraisal.

That I understand this market value appraisal is to be used in connection with the acquisition of land for an airport project by CITY OF FAYETTEVILLE DRAKE FIELD with the assistance of FAA funds or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations, policies, and procedures applicable to appraisal of land for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State.

That any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within reasonable control of the owner, has been disregarded in determining the compensation for the property.

That neither my employment nor my compensation for making this appraisal are in any way contingent upon the values reported herein.

That I have no direct or indirect, present or contemplated, future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency of said Airport or officials of the Federal Aviation Administration and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the conclusion set forth in this appraisal is my independent opinion of the value of the property as of the 29TH day of JUNE ~~19~~ 2009 and that such conclusion was reached without collaboration or direction as to value.

It is my opinion that the fair market value of the above captioned real property is as follows:

Value before acquisition	$ 1,492,020
Value after acquisition	$ 1,340,822
Value difference	$ 151,198

The property has been appraised for its fair market value as though owned in fee simple, or as encumbered only by the existing easement in favor of _____

The opinion of value expressed above is the result of and is subject to the data and conditions described in detail in this report of 93 pages.

Date of contract 06/17/09

Typed name GREGORY E. YOUNG

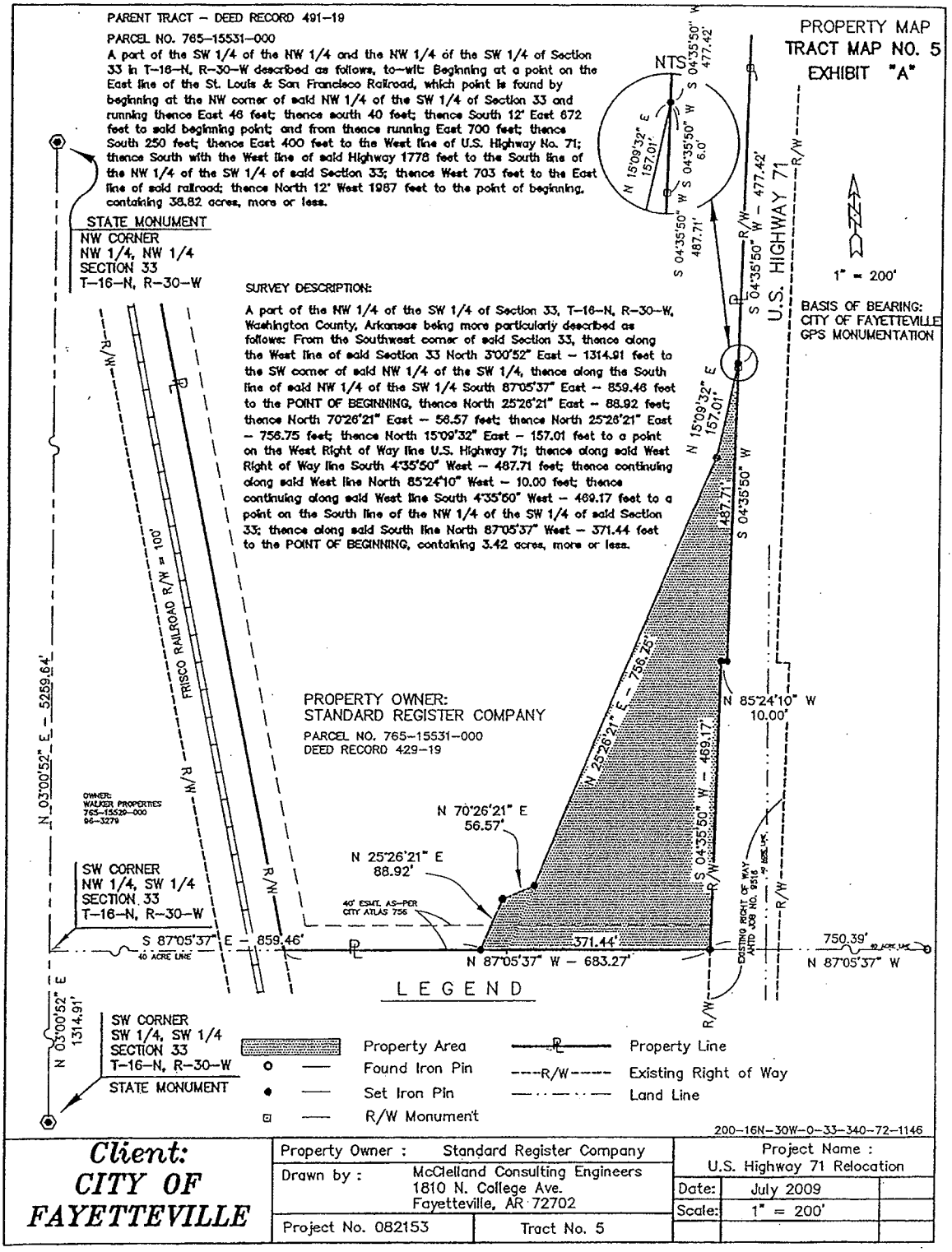
Signature Greg Young

Date 08/04/09

ARKANSAS APPRAISER LICENSING & CERTIFICATION BOARD
STATE CERTIFIED GENERAL
CG1354
GREGORY E. YOUNG

Note. - Other statements, required by the regulations of an appraisal organization of which the appraiser is a member or by circumstances connected with the appraisal assignment or the preparation of the appraisal, may be inserted where appropriate.

EXHIBIT "C"
SURVEY OF PROPERTY



Client: *CITY OF FAYETTEVILLE*	Property Owner : Standard Register Company		Project Name : U.S. Highway 71 Relocation
	Drawn by : McClelland Consulting Engineers, 1810 N. College Ave., Fayetteville, AR 72702		Date: July 2009
			Scale: 1" = 200'
	Project No. 082153	Tract No. 5	

EXHIBIT "D"
PLANS FOR THE PROJECT

EXHIBIT "E"
TEMPORARY CONSTRUCTION EASEMENT

This TEMPORARY CONSTRUCTION EASEMENT (the "**Easement**") is made the ___ day of September, 2009 by and between **THE STANDARD REGISTER COMPANY**, an Ohio corporation ("**SRC**"), and the CITY OF FAYETTEVILLE, ARKANSAS, a municipal corporation (the "**Airport**").

Background

The Airport has acquired approximately 3.4 acres of land in Fayetteville, Washington County, Arkansas, as shown on the drawing attached as Exhibit A (the "**Designated Property**"), in conjunction with the proposed relocation of US Highway 71 and the extension of a runway at the Airport. Airport desires to enter a portion of SRC's property for the purpose of constructing the airport expansion project (these activities are referred to as the "**Work**") and SRC has agreed to grant Airport a temporary construction easement in the areas described on the attached Schedule E-1 and depicted on the temporary construction easement map attached as Schedule E-2 (collectively the "**Easement Property**") on the terms and conditions set out below.

Agreement

1. Temporary Construction Easement. SRC authorizes Airport and its consultants and contractors to enter the Easement Property for the purpose of performing the Work, at Airport's sole cost and expense. This Easement is granted for the exclusive limited purpose of performing the Work and for no other purpose.

2. Compliance with Laws. Airport will obtain all licenses, permits, insurance and other authorizations required by law, and will otherwise comply with all federal, state and local governmental laws, rules, regulations and ordinances applicable to the Work.

3. No Interference. Airport will conduct the Work in a manner designed and implemented to minimize disruption to SRC's business operations. During the prosecution of the Work, SRC's existing ingress, egress and access to US Highway 71 will not be restricted on more than two occasions, for a maximum of one hour each time (and Airport will give SRC at least five business days advance written notice before any such restriction occurs).

4. Restoration. After completion of the Work, Airport will immediately restore the Easement Property to substantially the same condition as existed before the Work commenced, subject to improvements Airport has committed to make under the terms of a separate agreement with SRC.

5. Term of Agreement. This Easement will expire on the earlier of: (a) the date that Airport completes the Work; or (b) December 31, 2010 (the "**Term**").

6. Indemnity from Airport. Airport and its consultants will enter the Easement Property at their sole risk and expense. Airport indemnifies SRC and holds it harmless from and against all claims, damages, losses and other liabilities of any kind or nature (including, without limitation, reasonable attorneys' fees) arising out of any actual or alleged injury to or death of any person or loss of or damage to property resulting from any act or omission of Airport, its agents, employees and contractors, in connection with the performance of the Work. This indemnity will survive the Term of this Easement.

7. Governing Law. This Easement will be governed by, construed and enforced in accordance with the laws of the State of Arkansas.

8. Entire Agreement. This Easement constitutes the entire agreement between the parties with respect to the Airport's right to enter the Designated Property and perform the Work, and it may not be modified in any way, except by a written amendment signed by both parties.

9. Notices. All notices required under this Easement will be in writing and will be delivered to the addresses listed above, or to any other addresses modified by written notice delivered as required by this Section. A notice will be deemed to have been duly given if it is: (a) delivered in person, (b) delivered by any generally available overnight commercial delivery service, or (c) delivered by e-mail followed by an e-mail from the receiving party, confirming receipt of the notice. All properly delivered notices will be effective upon receipt (or in the case e-mail, on confirmation of receipt), or on the date that delivery is refused.

To SRC: 600 Albany Street
Dayton, Ohio 45401-1167
Attn: Gerard D. Sower, Esq., Vice President, Associate General Counsel
E-Mail: Gerard.Sowar@standardregister.com

To Airport: _____
_____
Attn: _____
E-Mail: _____

10. Counterparts / Electronic Transmission. This document may be signed in counterparts and the signatures on this document may be transmitted electronically. Counterparts of this document containing the signatures of both parties (whether original or electronically transmitted scanned copies) will be deemed to create a single, enforceable Easement .

THE STANDARD REGISTER COMPANY, an Ohio corporation

By: _____
Name: _____
Title: _____
Date: _____

CITY OF FAYETTEVILLE, ARKANSAS
a municipal corporation

By: _____
Lioneld Jordan, Mayor
Date: _____

By: _____
Sondra Smith, City Clerk
Date: _____

ACKNOWLEDGMENT

STATE OF OHIO)
) ss.
COUNTY OF MONTGOMERY)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared _____, to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/she/they is/are _____ of **The Standard Register Company** and is/are duly authorized to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he/she/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

_____
Notary Public

MY COMMISSION EXPIRES:
_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **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 to 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:
_____

Schedule E-1
TEMPORARY EASEMENT DESCRIPTION

HIGHWAY 71 RELOCATION

Tract No. 5

PROPERTY DESCRIPTION:

(Deed Records 99-73065)

PERMANENT UTILITY EASEMENT DESCRIPTION:
(NONE)

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement of variable width located within the above referenced property as shown on the attached Exhibit "A" Map. This temporary construction and grading easement contains 48,527 square feet (1.11 acres), more or less, and shall exclude any permanent structures which may be located or under construction within said temporary construction and grading easement area during the construction of this project and shall terminate when this project has been completed and accepted by the City of Fayetteville.

Schedule E-2
TEMPORARY CONSTRUCTION EASEMENT MAP

ACKNOWLEDGMENT

STATE OF OHIO)
) ss.
COUNTY OF MONTGOMERY)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared _____, to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/she/they is/are _____ of **The Standard Register Company** and is/are duly authorized to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he/she/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

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

_____
Notary Public

MY COMMISSION EXPIRES:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **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 to 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:

_____

Schedule E-1
TEMPORARY EASEMENT DESCRIPTION

HIGHWAY 71 RELOCATION

Tract No. 5

PROPERTY DESCRIPTION:

(Deed Records 99-73065)

PERMANENT UTILITY EASEMENT DESCRIPTION:
(NONE)

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction and grading easement of variable width located within the above referenced property as shown on the attached Exhibit "A" Map. This temporary construction and grading easement contains 48,527 square feet (1.11 acres), more or less, and shall exclude any permanent structures which may be located or under construction within said temporary construction and grading easement area during the construction of this project and shall terminate when this project has been completed and accepted by the City of Fayetteville.

Schedule E-2
TEMPORARY CONSTRUCTION EASEMENT MAP

OFFER AND ACCEPTANCE CONTRACT

1. The **City of Fayetteville, Arkansas**, a municipal corporation, offers to buy, subject to the terms and conditions set forth herein, the following described property:

   SEE ATTACHED EXHIBIT "A"
   FOR PROPERTY DESCRIPTION

2. **Purchase Price**: Subject to the following conditions, the City of Fayetteville shall pay for the property at closing, the total and cash payment of **$40,200.00** (including $1,082 for a temporary construction easement), in addition to relocating all signage on the property to be conveyed as directed by Coulson Properties Limited Partnership ("Coulson Properties"). The City of Fayetteville shall also restore the curb cuts on the remaining real estate owned by Coulson Properties at the City of Fayetteville's sole cost and expense

3. **Offer Contingent**: This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas.

4. Conveyance will be made to the City of Fayetteville by Special Warranty Deed in the foem attached hereto as exhibit B and shall be subject to all recorded instruments and easements. Such conveyance shall exclude mineral rights owned by Coulson Properties.

5. The City of Fayetteville shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. The City of Fayetteville shall pay the cost of the title insurance.

6. Coulson Properties agree(s) to allow the City of Fayetteville, if the City of Fayetteville so desires, at City of Fayetteville's expense, to survey the property.

7. Taxes and special assessments due on or before closing shall be paid by Coulson Properties. General taxes, ad valorem taxes, and special assessments for 2009 and subsequent years shall be prorated as of closing.

8. The closing date shall be within **ninety (90)** days after approval of this offer by the City Council. If such date of closing falls on a weekend or holiday, it will be held the following working day.

9. Possession of the property shall be delivered to the City of Fayetteville on the date of closing.

10. Coulson Properties hereby grant(s) permission for the City of Fayetteville or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.

11. Excluding signage, canopies and other trade fixtures, all improvements are included in the purchase price.

12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the City of Fayetteville.

13. Coulson Properties has disclosed to the City of Fayetteville that this location has been, and is capable of, being used for the retail sale of motor fuel. Coulson Properties has advised the City of Fayetteville to test the property for utilities and environmental hazards.

14. This agreement shall be governed by the laws of the State of Arkansas.

15. This agreement, when executed by both the City of Fayetteville and Coulson Properties shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

16. This contract expires, if not accepted by Coulson Properties on or before the _____ day of September, 2009.

17. The City of Fayetteville shall submit this fully executed Offer and Acceptance Contract to the City Council for their approval within thirty (30) days of acceptance by Coulson Properties .

18. **NOTICE:** **THE CITY OF FAYETTEVILLE ASSERTS AND Coulson Properties HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID.**

Coulson Properties Limited Partnership
1434 Pike Ave.
N. Little Rock, AR. 72114-4050

By Coulson Properties GP, LLC, General Partner

By: Mary Ann Dawkins Date: 9/8/09

Manager
Name and Title

By:

_____ Date: _____

_____
Name and Title

City of Fayetteville, Arkansas,
A municipal corporation

_____ Date: _____
Lioneld Jordan, Mayor

_____ Date: _____
Sondra Smith, City Clerk

EXHIBIT "A"
PROPERTY DESCRIPTION

FIVE (5) Pages

"ATTACHED"

SIGNED FOR IDENTIFICATION:

_____ Date:_____

_____ Date:_____

_____ Date:_____
Lioneld Jordan, Mayor

_____ Date:_____
Sondra Smith, City Clerk

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF ~~WASHINGTON~~ Pulaski) 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 MaryAnn Rankins to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that ~~he/she/they~~ is/~~are~~ the Manager of Coulson Properties GP LLC, Limited Partnership of Coulson Properties LP and is/~~are~~ duly authorized to execute the foregoing instrument for and in the name and behalf of said Coulson Properties General Partnership, the general partner, and further stated and acknowledged that ~~he/she/they~~ had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 8th day of September, 2009.

Notary Public

MY COMMISSION EXPIRES:

EVERETTE L. MARTIN
Pulaski County
My Commission Expires
September 8, 2013

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:

HIGHWAY 71 RELOCATION

Tract No. 1

PROPERTY DESCRIPTION:

(Deed Record 1029-334)

PERMANENT UTILITY EASEMENT DESCRIPTION:
(NONE)

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A 15 foot temporary construction and grading easement of equal and uniform width located along the East side of the above referenced property as shown on the attached Exhibit "A" Map. This temporary construction and grading easement contains 2,452 square feet (0.06 acres), more or less, and shall exclude any permanent structures which may be located or under construction within said temporary construction and grading easement area during the construction of this project and shall terminate when this project has been completed and accepted by the City of Fayetteville.

(6/19/2009) Ray Boudreaux - Tract 2 Prop Map.pdf

PROPERTY MAP
TRACT MAP NO. 2
EXHIBIT "A"

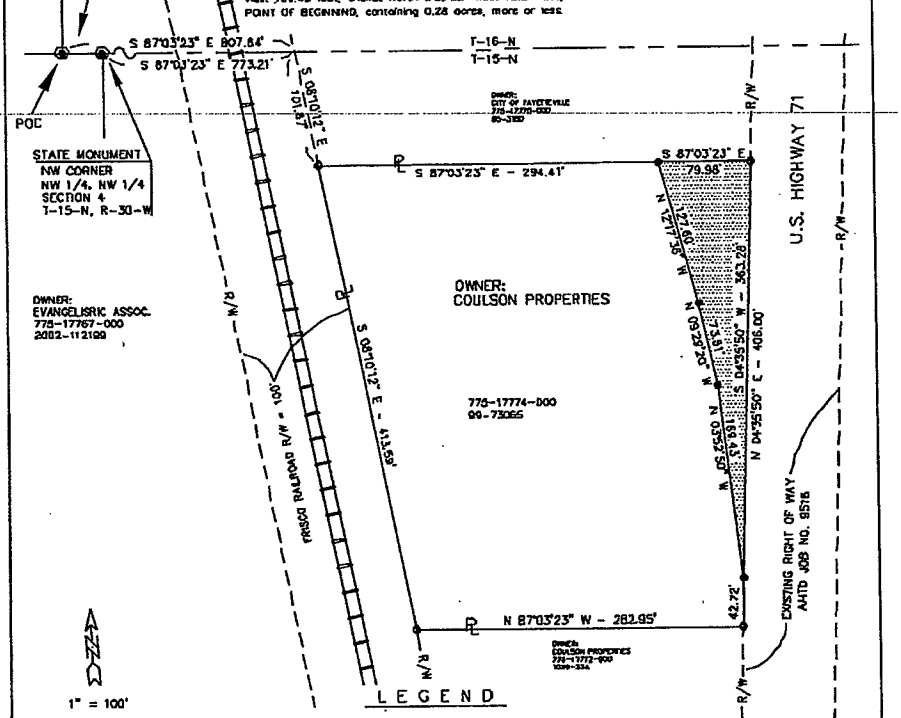
PARENT TRACT - DEED RECORD 99-73068

PARCEL NO. 775-17774-000

A part of the N 1/2 of the NW 1/4 of Section 4 in T-15-N, R-30-W described as beginning at a point South 88°32'28" East 773.13 feet and South 9°36'57" East 101.80 feet from the NW corner of said 20 acre tract, said point being a set iron pin on the easterly Right-of-Way of the St. Louis and San Francisco Railroad; thence South 88°32'28" East 374.03 feet to a set iron pin on the Westerly Right-of-Way of U.S. Highway No. 71; thence along said Right-of-Way South 3°11'34" West 408.00 feet to a set iron pin; thence North 88°32'28" West 282.52 feet to a set iron pin; thence along the said Railroad Right-of-Way North 9°36'57" West 413.52 feet to the point of beginning, containing 5.06 acres, more or less.

SURVEY DESCRIPTION:

A part of the NW 1/4 of the NW 1/4 of Section 4 in T-15-N, R-30-W, Washington County, Arkansas and being more particularly described as follows: From the NW corner of said NW 1/4 of the NW 1/4, thence South 87°03'23" East 773.21 feet to a point on the East Right of Way line of the Frisco Railroad, thence along said East line South 8°10'12" East 101.87 feet, thence South 87°03'23" East 294.41 feet to the POINT OF BEGINNING, thence South 87°03'23" East 79.98 feet to a point on the West Right of Way line of U.S. Highway No. 71; thence along said West line South 4°35'50" West 382.28 feet; thence North 3°32'30" West 169.43 feet; thence North 9°29'20" West 73.51 feet; thence North 12°17'38" West 127.80 feet to the POINT OF BEGINNING, containing 0.28 acres, more or less.

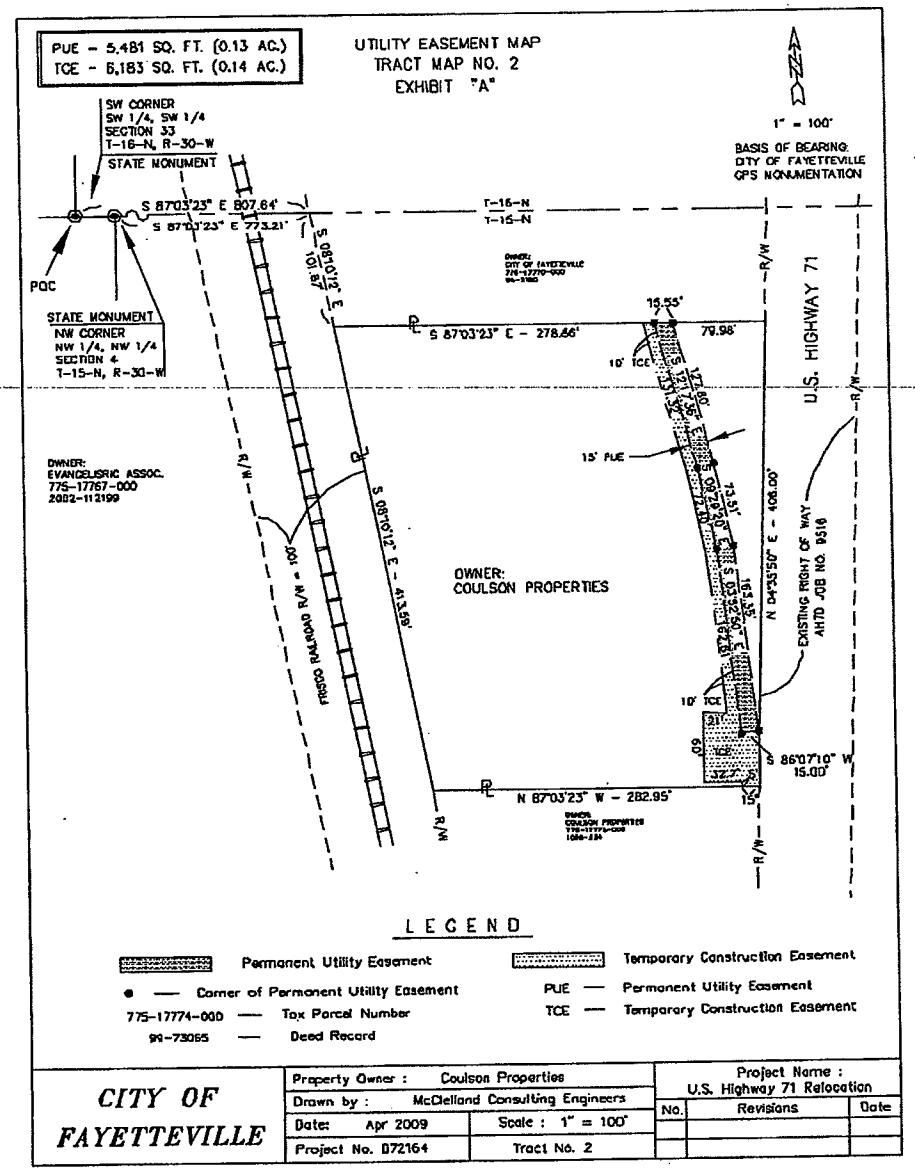


Client: CITY OF FAYETTEVILLE	Property Owner : Coulson Properties		Project Name : U.S. Highway 71 Relocation
	Drawn by : McClelland Consulting Engineers, 1810 N. College Ave., Fayetteville, AR 72702	Date:	June 2009
		Scale:	1" = 100'
	Project No. 072164 / Tract No. 2		

Tract No. 2
Parcel No. 775-17774-000
Deed Record 99-73065

SURVEY DESCRIPTION:

A part of the Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section 4, T-15-N, R-30-W, Washington County, Arkansas and being mort particularly described as follows: From the Northwest corner of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼), thence South 87°03'23" East - 773.21 feet to a point on the East Right of Way line of the Frisco railroad, thence along said East line South 8°10'12" East - 101.87 feet; thence South 87°03'23" east - 294.41 feet to the POINT OF BEGINNING, thence South 87°03'23" East - 79.98 feet to a point on the West Right of Way line of U.S. Highway No. 71; thence along said West line South 4°35'50" West - 362.28 feet; thence North 3°52'50" West - 169.43 feet; thence North 9°29'20" West - 73.51 feet; thence North 12°17'36" West 127.60 feet to the POINT OF BEGINNING, containing 0.28 acres, more or less.


PUE - 5,481 SQ. FT. (0.13 AC.)
TCE - 6,183 SQ. FT. (0.14 AC.)
UTILITY EASEMENT MAP
TRACT MAP NO. 2
EXHIBIT "A"
1" = 100'
BASIS OF BEARING:
CITY OF FAYETTEVILLE
GPS MONUMENTATION
SW CORNER
SW 1/4, SW 1/4
SECTION 33
T-16-N, R-30-W
STATE MONUMENT
S 87°03'23" E 807.64'
S 87°03'23" E 773.21'
T-16-N
T-15-N
POC
STATE MONUMENT
NW CORNER
NW 1/4, NW 1/4
SECTION 4
T-15-N, R-30-W
S 08°10'12" E 101.87'
S 87°03'23" E - 278.66'
15.53'
79.98'
10' TCE
172.80'
15' PUE
U.S. HIGHWAY 71
R/W
DWNER:
EVANGELISRIC ASSOC.
77S-17767-000
2002-112199
FRISCO RAILROAD R/W = 100'
S 08°10'12" E - 413.59'
OWNER:
COULSON PROPERTIES
N 04°35'50" E - 108.00'
EXISTING RIGHT OF WAY
AHTD JOB NO. 9518
10' TCE
60'
S 86°07'10" W
15.00'
N 87°03'23" W - 282.95'
LEGEND
Permanent Utility Easement
Temporary Construction Easement
Corner of Permanent Utility Easement
PUE — Permanent Utility Easement
77S-17774-000 — Tax Parcel Number
TCE — Temporary Construction Easement
99-73065 — Deed Record
CITY OF FAYETTEVILLE
Property Owner : Coulson Properties
Drawn by : McClelland Consulting Engineers
Date: Apr 2009
Scale : 1" = 100'
Project No. 072164
Tract No. 2
Project Name :
U.S. Highway 71 Relocation
No.
Revisions
Date

HIGHWAY 71 RELOCATION

Tract No. 2

PROPERTY DESCRIPTION:

(Deed Record 99-73065)

PERMANENT UTILITY EASEMENT DESCRIPTION:

Part of the Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section 4, T-15-N, R-30-W, Washington County, Arkansas, being more particularly defined as follows:

A 15 foot permanent utility easement of equal and uniform width located within property described in Deed Record 99-73065. This permanent utility easement is shown and dimensioned in detail on the attached Exhibit "A" Map and contains 5,481 square feet (0.13 acres), more or less.

Temporary construction and grading easement description:

A temporary construction and grading easement of variable width located along the West side of the above permanent utility easement as shown on the attached Exhibit "A" Map. This temporary construction and grading easement contains 6,183 square feet (0.14 acres), more or less, and shall exclude any permanent structures which may be located or under construction within said temporary construction and grading easement area during the construction of this project and shall terminate when this project has been completed and accepted by the City of Fayetteville.

EXHIBIT B

SPECIAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS:

THAT **Coulson Properties Limited Partnership** , an Arkansas limited partnership, hereinafter called ("GRANTOR"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, in hand paid by _____, hereinafter called ("GRANTEE"), the receipt of which is hereby acknowledged, does hereby (subject to the terms, covenants, conditions and restrictions set forth below) grant, bargain, sell and convey unto the said GRANTEE, and unto its, successors and assigns forever, certain real property (the "Property") situated in _____ County, _____, Arkansas, and more particularly described on **Exhibit A** which is attached hereto and made a part hereof by reference.

This conveyance is made by GRANTOR, and accepted by GRANTEE, subject to all conditions, covenants, restrictions, reservations, leases, exceptions, rights-of-way and easements of record and all laws, regulations and restrictions, including building and zoning ordinances of municipal or other governmental authorities applicable to and enforceable against the Property and all encroachments, protrusions, boundary line disputes, overlaps, shortages of area, and easements which an inspection of the Property or an accurate survey would disclose, the exceptions set forth on the attached **Exhibit B** and the payment of real and personal property taxes and special assessments for the year 2009 and subsequent years.

As further consideration for this conveyance, GRANTEE does hereby remise, release and forever discharge GRANTOR, Coulson Oil Company, Inc. and their respective members, managers, general partners, shareholders, agents, directors, employees and their respective general and limited partners, affiliates, officers, members, directors, shareholders, agents, managers, members, representatives, heirs, successors and assigns (collectively "Indemnified Parties"), from any and all claims, demands and causes of action, at law or in equity, for injury (including death), destruction, loss or damage of any kind or character, to the person or property of GRANTEE and GRANTEE's agents, employees, servants.

This Instrument Was Prepared By:
EVERETTE L. MARTIN, ESQ.
Post Office Box 68
North Little Rock, AR 72115

GRANTEE'S ACCEPTANCE AND AFFIDAVIT

The undersigned, on behalf of the GRANTEE, does hereby accept the above-described Property upon the terms, covenants and conditions set forth in this Special Warranty Deed, and certifies under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument. Exempt or no consideration paid if none shown.

_____
[Grantee's Name]
Address:_____

As further consideration for this conveyance, GRANTEE agrees to be responsible for and indemnify and hold the Indemnified Parties harmless from any and all claims, demands, causes of action, at law or in equity, brought by any and all third parties, including without limitation GRANTEE's agents, employees, servants, invitees, representatives, heirs, successors and assigns and also including (without limitation) any private citizens, persons, organizations and any agency, branch or representative of federal, state or local government, on account of any injury (including death), destruction, loss or damage of any kind or character to persons, property or natural resources, arising out of, or in relation to the condition of the Property from whatever cause, including without limitation, any actual or alleged spills, leaks or other discharges onto or into the Property which have occurred prior to or may occur at any time after the effective date of this conveyance.

The conditions, covenants, restrictions and other provisions set out hereinabove shall be covenants running with the land and shall be binding upon and shall inure to the benefit of the parties, their subsidiaries, affiliates, legal representatives, heirs, successors and assigns.

TO HAVE AND TO HOLD said Property unto the said GRANTEE and unto GRANTEE's, successors and assigns forever, with all tenements, appurtenances and hereditaments thereunto belonging, and, subject to the terms, covenants, conditions, restrictions and provisions contained herein, and in lieu of all other warranties, express or implied, the GRANTOR hereby covenants with the said GRANTEE that GRANTOR will forever warrant and defend the title to said Property against all lawful claims and encumbrances done or suffered by or through GRANTOR, but against none other.

Executed to be effective as of the ___ day of _____, 2009.

Coulson Properties Limited Partnership,
an Arkansas limited partnership
By: Coulson Properties GP, LLC, general partner

By: _____
Michael B. Coulson, member / Date

[Acknowledgement Follows]

STATE OF ARKANSAS)
) ss: Acknowledgment
COUNTY OF PULASKI)

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named **Michael B. Coulson**, to me personally well known, who stated that he was a member of **Coulson Properties Limited Partnership**, an Arkansas limited partnership, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said partnership and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ___ day of _____, 2009.

_____
Notary Public

My Commission Expires:

_____
(S E A L)

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Greg Tabor	Patrol	Police
Submitted By	**Division**	**Department**

Action Required:

Acceptance of the 2009-2010 Selective Traffic Enforcement Program (STEP) grant award in the amount of $108,000 and the local in-kind matching requirement of $83,000.

$ 108,000.00	$ 108,000.00	Police STEP Grant 2009-2010
Cost of this request	Category / Project Budget	Program Category / Project Name
1010-2920-5210.00 1010-2920-5120.00	$ -	Grant
Account Number	Funds Used to Date	Program / Project Category Name
08067-0910	$ 108,000.00	General
Project Number	Remaining Balance	Fund Name

Budgeted Item [X] **Budget Adjustment Attached** [X]

Department Director — Date 9-15-09

City Attorney — Date 9/22/09

Finance and Internal Services Director — Date 9/23/09

Chief of Staff — Date 9/23/09

Mayor — Date 9/23/09

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED KQ 9-15-09

Received in Mayor's Office — ENTERED LB 9-22-09

Comments:

Fayetteville
ARKANSAS

Fayetteville Police Department
100-A West Rock
Fayetteville, AR 72701
Telephone: (479) 587-3555
Fax: (479) 587-3563

Departmental Correspondence

To: Mayor Lioneld Jordan and City Council

From: Greg Tabor, Police Chief

Date: September 15, 2009

Re: **2009-2010 Selective Traffic Enforcement Program (STEP) Grant Award**

Background

The Fayetteville Police Department has participated in the Selective Traffic Enforcement Program (STEP) every year since its inception in 1998. For twelve (12) years, we have partnered through grant funding with the Arkansas Highway Safety Office in an effort to reduce the total number of motor vehicle crashes, injuries and fatalities. Our primary strategy for reaching our mutual goals is through dedicated and diligent enforcement of occupant protection and DWI/DUI laws. This is accomplished by dedicating patrol officer(s) to monitor STEP activity for a given period of time in a known problem area. In addition to increased law enforcement, this grant funding allows us to participate in directed DWI Checkpoints, Click It or Ticket protection mobilizations, purchase additional equipment, provide child safety seat checkpoints, and a loaner child safety seat for those in need.

Discussion

The 2009-2010 STEP Grant Award is based on a local match of in-kind expenses in the amount of $83,000 and a grant award for $95,500 in federal and $12,500 in state funding. Local matching funds are only required on the federal funding portion and the state funding is considered a local match. In-kind expenses are defined as on-duty regular shift hours dedicated to STEP activity; furthermore, this grant will reimburse the City for overtime hours dedicated to STEP activity. The grant period for this application runs from October 1, 2009 to September 30, 2010. STEP is a very important program and funding source for the Fayetteville Police Department. Through dedicated STEP activity during our regular shift hours, our Department can meet the in-kind matching funds required of this grant application. Furthermore, the loss of this grant funding would have an adverse affect on community safety.

Recommendation

Due to the many positive results, Staff recommends acceptance of the 2009-2010 Selective Traffic Enforcement Program Grant Award. If you should have any comments or question regarding this grant application, please contact Chief Tabor or Capt. Brown at extension 500.

Budget Impact

In-kind expenses in the amount of $83,000 are budgeted and $12,500 will be provided by the State for total matching funds of $95,500. Our patrol officers will be performing these duties irregardless of STEP Grant matching requirements.

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE 2009-2010 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT IN THE AMOUNT OF $108,000.00 FOR THE PURPOSE OF PAYING OVERTIME TO OFFICERS ENGAGED IN THE ENFORCEMENT OF DWI/DUI AND SEATBELT LAWS AND OTHER PURPOSES; AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING THE GRANT 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 the 2009-2010 Selective Traffic Enforcement Program (STEP) Grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment recognizing the grant revenue.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

State of Arkansas

ARKANSAS STATE POLICE

1 State Police Plaza Drive Little Rock, Arkansas 72209-4822 www.asp.arkansas.gov

"SERVING WITH PRIDE AND DISTINCTION SINCE 1935"

Mike Beebe
Governor

Winford E. Phillips
Director

ARKANSAS STATE POLICE COMMISSION

Warren Dupwe
Chairman
Jonesboro

Dr. Charisse Childers
Vice-Chairperson
Little Rock

Dr. Lewis Shepherd
Secretary
Arkadelphia

John W. Allison
Conway

Steve G. Smith
Little Rock

Jane Christenson
Harrison

Daniel "Woody" Futrell
Nashville

September 10, 2009

Captain William K. Brown
Project Coordinator
Fayetteville Police Dept.
100-A W. Rock St.
Fayetteville, AR 72701-6191

Re: OP-2010-03-02-13
K8-2010-08-08-13
SE-2010-13-01-13
Selective Traffic Enforcement Project (STEP)

Dear Captain Brown:

The above referenced FY 2010 Subgrant Agreement is enclosed for your review and signature. The Subgrant Agreement/Contract Terms and Common Rule for this program are made a part of this agreement and should be kept in your agency's file with your copy of the signed agreement. The agreement may not include all items presented in your proposal. Only those activities included in the agreement are eligible for reimbursement.

Please return the signed agreement (keep the enclosed Subgrant Agreement/Contracts Terms and Common Rule) to our office no later than September 24, 2009. We will send you a copy of the fully executed agreement.

We look forward to working with your agency during the upcoming year.

Sincerely,

Bridget White

Bridget White
Administrator
Highway Safety Office

Enclosure

C: Agreement/Contract File

State of Arkansas

ARKANSAS STATE POLICE

1 State Police Plaza Drive Little Rock, Arkansas 72209-4822 www.asp.arkansas.gov

"SERVING WITH PRIDE AND DISTINCTION SINCE 1935"

Mike Beebe
Governor

Winford E. Phillips
Director

FY 2010 HIGHWAY SAFETY SUBGRANT AGREEMENT
OCCUPANT PROTECTION PROGRAM
ALCOHOL AND OTHER DRUGS COUNTERMEASURE PROGRAM
SPEED ENFORCEMENT PROGRAM

RECIPIENT
Fayetteville Police Department
100-A West Rock Street
Fayetteville, Arkansas 72701
Telephone: (479) 587-3500
Fax: (479) 587-3522

GOVERNMENTAL UNIT
Fayetteville Police Department
100-A West Rock Street
Fayetteville, Arkansas 72701

PROJECT NO. OP-2010-03-02-13
PROJECT NO. K8-2010-08-08-13
PROJECT NO. SE-2010-13-01-13
TAX ID NO. 71-6018462

TYPE OF APPLICATION
Initial: _____
Revision: _____
Continuation: X

PROJECT TITLE
Selective Traffic Enforcement Project

INITIAL PROJECT STARTING DATE
October 1, 1998

OPERATIONAL AREA OF PROJECT
City of Fayetteville

COST CATEGORY	AMOUNT FEDERAL	AMOUNT STATE	AMOUNT LOCAL
Personal Services	$91,100		$57,270
Equipment	4,400		
Maintenance & Operation			16,600
Other Direct Costs		$12,500	9,130
Indirect Costs			
Administrative Costs			
Total	$95,500	$12,500	$83,000

PROJECT PERIOD		FUNDING PERIOD	
From:	10-1-2009	From:	10-1-2009
To:	9-30-2010	To:	9-30-2010

FUNDING

SOURCE	AMOUNT
Federal	$95,500
State	12,500
Local	83,000
Total	$191,000

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

INDEX

	Item	Page
1.	Title Page	1
2.	Index Page	2
3.	Background, Problem Statement, Goal Statement	3
4.	Scope of Work	4
5.	Audit and Certification Requirements	5-7
6.	Work Statement	8-12
7.	Subgrantee Invoice Forms	13-15
8.	Signature Sheet	16

AGREEMENT PREPARED BY:	Lakesha Smith
TITLE:	Fiscal Manager
ADDRESS:	Arkansas State Police Arkansas Highway Safety Office 1 State Police Plaza Little Rock, AR 72209
PHONE:	(501) 618 - 8132
FAX:	(501) 618 - 8124

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT
PROBLEM AND GOALS

BACKGROUND

The State of Arkansas is taking increased steps to address safety on the State's roadways as part of an effort to implement innovative strategies to reduce traffic fatalities throughout the State. The Arkansas Highway Safety Office (AHSO) considers safety issues by focusing on behavioral aspects at the driver level. The goal is to reduce highway fatalities by better identifying driver behaviors that cause fatal crashes, implementing programs to address those behaviors and targeting locations where fatal crashes occur.

Based on a five-year average (2004 – 2008), 654 people lose their lives each year on Arkansas roadways. In 2008, there were 600 total traffic fatalities compared to 649 the previous year. Over the past five years, alcohol-related fatalities (fatalities involving a driver or motorcycle operator with a BAC of .08 or greater) averaged 187 per year. In 2008, there were 171 such alcohol-related fatalities. This is a decrease of 10 from the previous year.

An additional area of concern is occupant protection where in 2008 there were 265 unrestrained passenger vehicle occupant fatalities. In 2008, Arkansas' safety belt use rate was 70.4%, while the National use rate stood at 83%. However, Arkansas' safety belt use rate increased to 74.4% in 2009.

Also of concern are speed-related fatalities where in 2008, 63 people died as a result of speed-related crashes.

Strict enforcement of the State's traffic laws, through Selective Traffic Enforcement Projects (STEP), has been proven effective in reducing traffic crashes and fatalities. The State will continue to use this strategy to address its traffic safety problems.

PROBLEM STATEMENT

The city of Fayetteville is a community of 72,208 residents having a geographical size of 43.4 square miles. The city posted 38 traffic fatalities from 2004 through 2008 and of those 21 were alcohol-related and 3 were speed-related. A seat belt use rate of 80% was recorded in 2009.

In 1998 the Fayetteville Police Department began a proactive approach to collision reduction which included implementation of the STEP through a grant with the AHSO. The Department wishes to continue to operate aggressive and sustained selective traffic enforcement, as well as, participate in the State's Impaired Driving, Seat Belt, and Speed mobilizations/campaigns.

GOALS

The overall goal of this project is to reduce the number of traffic-related crashes and fatalities by conducting a selective traffic enforcement project in Fayetteville. The goal for each component of this project is as follows:

Alcohol Component (Section 410) – Reduce the annual number of alcohol-related crashes from 95 and reduce the number of alcohol-related fatalities from 4 as recorded in 2008.

Seat Belt Component (Section 402) – Increase seat belt use by 3 percentage points from 80% in 2009 to 83% in 2010.

Speed Component (Section 402) – Reduce the number of speed-related crashes from 150 and the number of speed-related fatalities from one as recorded in 2008.

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

SCOPE OF WORK

SUMMARY OF PROJECT OBJECTIVES: This project's primary objectives are to achieve an average of three vehicle stops per hour per officer during traffic enforcement (with an emphasis on enforcement of speed and occupant restraint laws) and one DWI/DUI arrest per eight hours per officer during alcohol enforcement. A public information and education program will support these objectives.

METHOD OF EVALUATION BY ASP/HSO

ADMINISTRATIVE: X
IMPACT EVALUATION: X By achievement of performance standards.

REIMBURSEMENT - ACTUAL COST ONLY

____ ASP/HSO will reimburse the recipient an amount equal to ____% of all eligible cost.

X ASP/HSO will reimburse the recipient an amount equal to all eligible costs as identified in work statement.

REIMBURSEMENT LIMITS

1. Maximum amount eligible for reimbursement:
   Federal Funds: $ 95,500
   State Funds: $ 12,500
2. Only those orders placed and costs incurred during the following time period shall be eligible for reimbursement:
   (Date) 10-1-2009 to (Date) 9-30-2010
3. The recipient must bear all costs not eligible for Federal reimbursement.

Federal and State regulations shall be the basis for determining eligibility of costs, as detailed in the General Provisions and Subgrant Agreement/Contract Terms.

This agreement may be amended only by written notice in advance and in accordance with ASP/HSO policy. (See Subgrant Agreement/Contract Term II.)

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

AUDIT REQUIREMENTS

The recipient will arrange for an organization-wide financial and compliance audit, as required by OMB Circular A-133, within the prescribed audit reporting cycle. The audit report must separately identify highway safety funds from other Federal funds. One (1) copy of the report will be furnished to the Arkansas State Police Highway Safety Office within three months of the report date. Failure to furnish an acceptable audit as determined by the cognizant Federal audit agency may be a basis for denial and/or refunding of Federal funds. A copy of A-133 is available on request. The recipient has been made aware of audit requirements.

CERTIFICATION REGARDING FEDERAL LOBBYING:

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

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

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

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

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

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

RESTRICTION ON STATE LOBBYING:

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

In accordance with the provisions of 49 CFR Part 29, the State agrees that it shall not knowingly enter into any agreement under its Highway Safety Plan with a person or entity that is barred, suspended, declared ineligible, or voluntarily excluded from participation in the Section 402 program, unless otherwise authorized by NHTSA. The State further agrees that it will include the following clause and accompanying instruction, without modification, in all lower tier covered transactions, as provided by 49 CFR Part 29, and in all solicitations for lower tier covered transactions.

Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that is it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

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

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

WORK STATEMENT

A. The recipient, Fayetteville Police Department, in exchange for consideration offered by the Arkansas State Police Highway Safety Office, hereafter referred to as the Arkansas Highway Safety Office (AHSO), and in the interest of improving highway safety, hereby agrees to pursue the achievement of the following objectives:

1. Appoint a Project Coordinator to be a liaison between the recipient and the Arkansas Highway Safety Office (AHSO) and to be responsible for coordinating selective enforcement activities and financial transactions associated with this subgrant agreement. Herein, give signature authorization for the Project Coordinator to request reimbursement and agreement change orders when applicable. Compensation for the Project Coordinator will be from local funds.

2. Ensure that the Project Coordinator, or designee, has successfully completed the Arkansas Highway Safety Office Project Management Course if offered. This course will provide information and updates on State, Federal and Highway Safety Office policies and procedures. Travel, meals and lodging will be reimbursed for eligible participants. Participants will be notified of the specific dates and location of this course.

3. Implement a seat belt policy if one does not exist. If not previously submitted, provide a copy of the policy to the AHSO no later than sixty days after the start of this project.

4. Conduct selective enforcement of the State's seat belt, driving while intoxicated (DWI)/driving under the influence (DUI), speed limit, child passenger protection and motorcycle helmet laws. Officers are to ensure compliance with the State's seat belt and child restraint laws during all vehicle stops. Enforcement should target locations where fatal/serious injury crashes are occurring.

5. Seat belt enforcement (from 6:00 a.m. until 9:00 p.m.) will emphasize enforcement of seat belt and child restraint laws. Speed enforcement (from 6:00 a.m. until 9:00 p.m.) will emphasize enforcement of speed limit laws and may only be worked during one speed mobilization referenced in Work Statement 7 on the next page. DWI/DUI enforcement will start no earlier than 9:00 p.m. and end no later than 6:00 a.m. the following morning, any day of the week providing the performance standard (listed below) is met. The AHSO retains the right to limit or modify the enforcement hours and days at its discretion and as necessary to meet performance compliance requirements. Officers working on the project are expected to enforce all the laws cited in this agreement during seat belt, speed and DWI/DUI enforcement. Participating officers are expected to average two vehicle stops per hour when not actively processing a DWI arrest during DWI enforcement.

6. Performance standards for the project and individual participating officers are as follows:

Seat Belt or Speed Enforcement	DWI/DUI Enforcement
Average three vehicle stops per hour per officer	Average one DWI/DUI arrest per eight hours per officer

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

WORK STATEMENT

Persons arrested for violation of Arkansas Code Annotated 5-65-103 and 5-56-205 shall be determined to be DWI arrests. Youthful offenders arrested for violation of Arkansas Code Annotated 5-65-303 shall be determined to be DUI arrests.

7. Participate in two (2) Seat Belt, five (5) DWI/DUI, and one (1) Speed State/National enforcement mobilizations during the project period. Must participate in the public information and education (PI&E) activities (press conferences/news releases) in conjunction with the mobilization activities. An informal seat belt survey conducted by the agency will also precede and follow each seat belt mobilization for evaluation purposes. The mobilizations will be as follows:

   - State Seat Belt Mobilization – November 23 – 29, 2009
   - State DWI Mobilization – December 21, 2009 – January 3, 2010
   - State DWI Mobilization – March 12 – 21, 2010
   - State DWI Mobilization – April 16 – 25, 2010
   - National Memorial Day Seat Belt Mobilization – May 24 – June 6, 2010
   - State DWI Mobilization – July 1 - 5, 2010
   - National Labor Day DWI/DUI Mobilization – August 20 – September 6, 2010*
   - National Speed Mobilization - dates to be determined.

   Note: Dates are subject to change.

   *Conduct checkpoints and/or saturation patrols on at least four nights during the National impaired driving mobilization.

   Manage project activity to ensure that sufficient funds are available to participate in the mobilizations. Submit a mobilization report within 15 days after a mobilization period in accordance with the format provided by the AHSO. Agency is urged to participate in sobriety checkpoints and/or saturation patrols during DWI/DUI mobilizations.

8. Conduct other PI&E activities to support the objectives of this project. These activities will include, but are not limited to, issuing a news release at the beginning of the project period to notify the community of the project activities, conducting a minimum of two media exposures for each mobilization (e.g., news conferences, news releases, interview, reporter ride-along) and participating in a minimum of two (2) other community activities (e.g., community events, health fairs, booths, civic/school/employer presentations) during the year.

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

WORK STATEMENT

9. The only costs eligible for reimbursement are selective enforcement (which includes officer pay and applicable benefits), child safety seats and portable breath test devices. Officers may also be compensated at the selective enforcement rate for hours spent conducting seat belt surveys associated with mobilizations and time spent working at clinics associated with the proper installation of child safety seats. Hours spent conducting seat belt surveys, participating in sobriety checkpoints, or working at child safety seat clinics will not be used when calculating enforcement performance. The recipient will be reimbursed for officers working selective traffic enforcement at a rate that does not exceed one and one-half times the officer's regular hourly rate. Reimbursement is limited to one officer per patrol vehicle. Officers compensated through this agreement shall work strictly within the scope of this project while performing duties in connection with and being funded by this agreement. Hours worked on and compensated through this agreement must not supplant (be a substitute for) regular officer hours and pay. Routine patrol functions, including crash investigations, will be assigned to personnel on regular duty. Should a project officer become involved in routine patrol functions while conducting selective enforcement, the officer will be compensated from other funds. **No part-time personnel can be compensated through this agreement.**

10. Purchase portable breath test devices which are listed on the National Highway Traffic Safety Administration current Conforming Products List of Evidential Breath Measurement Devices at a total cost not to exceed $4,400. These are to be used by project officers to assist in identifying and arresting impaired drivers. Priority use of this equipment shall be given to those officers actively working STEP enforcement. Assurance is provided herein that throughout the life expectancy of this equipment, it will be used for the purposes expressed or implied in this agreement. All purchases must be approved in advance and be in compliance with local and state purchasing laws and regulations.

11. Purchase and loan child safety seats in accordance with AHSO policy. Seats must be purchased no later than February 28, 2010. Invoices for the seats must be submitted to the AHSO within 30 days of purchase. All purchases must be in compliance with local and state purchasing laws and regulations.

12. Ensure that all officers working on this project have successfully completed the National Highway Traffic Safety Administration's approved courses on occupant protection usage and enforcement (OPUE) or traffic occupant protection strategies (TOPS) training and standardized field sobriety testing (SFST) during the project period.

13. Ensure that all officers working this project are familiar with Act 308 of 2009 (the amended mandatory seat belt law). Effective June 30, 2009, the Act makes a violation of the mandatory seat belt law a "primary" offense for enforcement purposes.

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

WORK STATEMENT

14. Ensure that all officers working on this project are familiar with Act 470 of 2001 (the amended "Child Passenger Protection Act"). Effective August 13, 2001, all children under the age of fifteen (15) years must be restrained and any child under six (6) years of age and under sixty (60) pounds in weight must be restrained in a child safety seat. Violation of this Act is a primary offense, meaning that a vehicle may be stopped if there is probable cause to believe that the law is being violated.

15. Ensure that all officers working on this project are familiar with Act 561 of 2001 (the ".08 BAC law").

16. Submit monthly reimbursement requests, local match reporting form and activity reports, including PI&E activities, along with a cover letter(s) by the 15th of the subsequent month in accordance with formats provided by the AHSO. Also include with the reimbursement requests as back-up supporting documentation, payroll summary sheets which accurately reflects payroll disbursed by the agency for STEP for the time period requested and invoices for any eligible items purchased (i.e. child safety seats) along with proof of payment (i.e. copy of the check). The summary sheets must record each officer who worked, dates they worked, number of hours worked for each date, regular and overtime pay rates, applicable fringe rates and be signed by both the project coordinator and an agency payroll or fiscal department representative. An Annual Project Activity Report will be submitted in accordance with the format provided by the AHSO. Include with the annual report a tabulation of local funds contributed (50% required) to this project. This annual report and the final reimbursement request are due within 30 days following the end of the project period. Final reimbursement will not be made until a satisfactory annual report is submitted.

17. Create a project file for maintaining the agreement and financial documents. The file will contain a copy of this agreement, agreement terms, related ASP/AHSO policies and procedures, policies or procedures of the recipient related to this project's activities, copies of monthly activity reports, AHSO STEP daily worksheets, reimbursement requests, payroll summary sheets outlined in Work Statement 15, other supporting financial documentation such as payroll printouts and invoices, a copy of daily time sheets which reflect regular and selective enforcement hours worked correspondence relating to the agreement, and documentation of any public information activities. The file must be maintained in one location and is subject to review by State and Federal authorities responsible for oversight of this agreement. **Copies of all time sheets and original AHSO STEP daily worksheets for all selective enforcement officers paid through this agreement must be kept in this file. All time sheets must have officer's and supervisor's signatures with attached supporting documents. All AHSO STEP daily worksheets must be completed properly and have the officer's and a supervisor's signature to be eligible and approved for reimbursement.**

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

WORK STATEMENT

B. The Arkansas Highway Safety Office (AHSO) hereby agrees to perform the following activities:

1. Reimburse the recipient for all eligible costs incurred in accordance with provisions stated in the Subgrant Agreement/Contract Terms. An analysis of reimbursable costs is provided in the attached Subgrantee Invoice Form.

2. Provide reasonable consultative assistance to the recipient to aid in the achievement of project objectives.

3. Conduct administrative and/or on-site evaluations to assess the effectiveness of the project. Evaluations will include, but are not limited to, a review of activity reports examining progress toward objectives stated in the work statement, reimbursement requests, fiscal management and on-site monitoring visits.

Arkansas State Police
Highway Safety Office
Subgrantee Invoice Form
FY 2010
Selective Traffic Enforcement Program

SUBGRANT #:	OP-2010-03-02-13	AWARD PERIOD:	10/1/09 - 9/30/10		
	K8-2010-08-08-13	CFDA TITLE: State & Community Highway Safety			
	SE-2010-13-01-13	AWARD AMOUNT:	$ 64,300.00	CFDA#	20.600
EIN (Tax ID #):	71-6018462	CFDA TITLE: Alcohol Traffic Safety and Drunk Driving Incentive Grants			
		AWARD AMOUNT:	$ 31,200.00	CFDA#	20.601
		TITLE: Child Passenger Protection Fund (SCP)			
		AWARD AMOUNT:	$ 12,500.00	CFDA#	N/A
Request Period:					
Project:	Selective Traffic Enforcement Project (STEP)				

Subgrantee Name:	Fayetteville Police Department		Telephone #:	(479) 587-3500
Mailing Address:	100-A West Rock Street	Fayetteville	Arkansas	72701

Budget Categories	Approved Budget	Revised Budget	Previous Expenditures	Expenditures This Period	Total Expenditures	Remaining Budget
PERSONAL SERVICES						
Overtime - Selective Enforcement - 402 OP	$61,800.00				-	$61,800.00
Overtime - Selective Enforcement - 402 SE	$2,500.00				-	$2,500.00
Overtime - Selective Enforcement - 410 K8	$26,800.00				-	$26,800.00
EQUIPMENT						
PBTs - 410 K8	$4,400.00				-	$4,400.00
OTHER DIRECT COSTS						
Child Safety Seats (State)	$12,500.00				-	$12,500.00
Total	$108,000.00				-	$108,000.00

Must include all equipment acquisitions of low value (500.00 - 2,500.00) or capital (2,500.00 or greater) and submit subgrantee low value and capital equipment inventory form with invoice form.

On behalf of the subgrantee listed above, I certify that the items for which payment is claimed were furnished under the authority of the law and in accordance with the terms of our grant with the Arkansas State Police, Highway Safety Program and that the charges are reasonable, proper, and no part of this claim has been paid.

Amount of this Request
$ -

Signature of Subgrantee:		Date:	
Title:			
Contact Person:		Contact Phone:	

ARKANSAS STATE POLICE USE ONLY				OUTLINE AGREEMENT #:	
VENDOR #:	100036504	AGENCY CODE:	0960	DOC#:	
PO #:		GOODS REC.#:		MATERIAL #:	10119381
					AMOUNT

General Ledger #	Fund	Fund Center	Invoice / Reference #	Cost Center	IO/WBS	
5100001000	SMP2003	1FJ		456708	F.0960.402-10-OP-001-S	
5100001000	SMP2003	1FJ		456708	F.0960.402-10-SE-001-S	
5100001000	SMP2203	1FJ		456709	F.0960.410-10-K8-001-S	
5100001000	SCP0000	1FD		456714	NA	
					TOTAL	

REVIEWED & APPROVED TO PAY BY:		DATE:	

Attach Completed Line Item Detail Sheet and Mail To:	Arkansas State Police Highway Safety Office #1 State Police Plaza Drive Little Rock, Arkansas 72209
FAXED BILLS WILL NOT BE ACCEPTED	

Arkansas State Police
Highway Safety Office
Line Item Details
FY 2010
Selective Traffic Enforcement Program

Attach to Page 13

Fayetteville Police Department
Selective Traffic Enforcement Project (STEP)

	FOR THE PERIOD	Transfer Totals to Page 13
Overtime Selective Enforcement (402)		
Selective Enforcement 402 OP		
Selective Enforcement 402 SE		
Subtotal		0.00
Overtime Selective Enforcement (410) DWI		
Selective Enforcement 410 K8		
Subtotal		0.00
Equipment (410)		
PBTs - 410		
		0.00
Child Safety Seats (State)		
Item 1		
Item 2		
Item 3		
Subtotal		0.00

TOTAL BILLED $ -

Arkansas State Police
Highway Safety Office
Subgrantee Local Match Form
FY 2010
Selective Traffic Enforcement Program

SUBGRANT #:	OP-2010-03-02-013	AWARD PERIOD:	10/1/09 - 9/30/10		
	K8-2010-08-08-13	CFDA TITLE: State & Community Highway Safety			
	SE-2010-13-01-13				
EIN (Tax ID #):	71-6018462				
Report Period:					
Project:	Selective Traffic Enforcement Project (STEP)				

Subgrantee Name:	City of Fayetteville			Telephone #:	(479) 587-3500
Mailing Address:	100-A West Rock Street		Fayetteville	Arkansas	72701

Budget Categories	Approved Budget	Revised Budget	Previous Expenditures	Expenditures This Period	Total Expenditures	Remaining Budget
Personal Services	$57,270.00				-	$57,270.00
Maintenance and Operations	$16,600.00				-	$16,600.00
Child Safety Seats (State)	$9,130.00				-	$9,130.00
Total	$83,000.00				-	$83,000.00

Amount of this Report
$ -

Signature of Subgrantee:		Date:	
Title:			
Contact Person:		Contact Phone:	

Arkansas State Police
Highway Safety Office
#1 State Police Plaza Drive
Little Rock, Arkansas 72209

ARKANSAS STATE POLICE
HIGHWAY SAFETY SUBGRANT AGREEMENT

ACCEPTANCE AND AUTHORIZATION TO PROCEED

It is understood and agreed by the undersigned that a subgrant received for this agreement is subject to the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU); subsequent U.S. Department of Transportation funding reauthorization; and all administrative regulations governing this grant established by the U.S. Department of Transportation approved in accordance with 49 CFR Part 18 subject to the availability of Federal funds. It is further understood that any State funds utilized within are subject to all applicable State regulations and are likewise subject to their availability. It is expressly agreed that this agreement including the Appendix (Subgrant Agreement/Contract Terms and Attachment), constitute an official part of the State's Highway Safety Program and that said recipient will meet the requirements as set forth herein.

The recipient has appointed the following official representatives with legal authority to accept this subgrant agreement and to provide such additional information as may be required.

A. SUBGRANT DIRECTOR		**B. AUTHORIZING OFFICIAL**	
1. Signature:		1. Signature:	
2. Name:	Greg Tabor	2. Name:	Honorable Lioneld Jordan
3. Title:	Chief of Police	3. Title:	Mayor
4. Date:	9-15-09	4. Date:	

Approval to proceed, effective 10-1-2009 to 9-30-2010 with committed Federal funds of $95,500 State funds of $12,500, given by the State Official responsible to the Governor for administration of the State Highway Safety Program:

Approved:

Director, Arkansas State Police
and
Governor's Highway Safety Representative

Date

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Police Division: Police Program: Police/Animal Projects	Date Requested	Adjustment Number
2009		9/15/2009	

Project or Item Added/Increased:
Personnel Services-Contra and Minor Equipment

Project or Item Deleted/Reduced:
Federal and State Grants - Operational

Justification of this Increase:
This increase is needed to recognize the acceptance of the 2009-2010 Selective Traffic Enforcement Program (STEP) grant.

Justification of this Decrease:
Increase revenue to recognize the 2009-2010 Selective Traffic Enforcement Program (STEP) grant.

Increase Budget

Account Name	Account Number				Amount	Project Number	
Personnel Services - Contra	1010	2920	5120	00	91,100	08067	0910
Minor Equipment	1010	2920	5210	00	16,900	08067	0910

Decrease Budget

Account Name	Account Number				Amount	Project Number	
Federal Grants - Operational	1010	0001	4309	01	95,500	08067	0910
State Grants - Operational	1010	0001	4302	01	12,500	08067	0910

V.090403

Division Head — Date 9-15-09

Budget Director — Date 9-15-09

Department Director — Date

Finance Director — Date 9/23/09

Chief of Staff — Date

Budget & Research Use Only

Type: A B C (D) E

Requested By

General Ledger Date

Posted to General Ledger — Initial — Date

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

10/6/2009
City Council Meeting Date

Greg Tabor	Police	Police
Submitted By	Division	Department

Action Required:

Council approve a resolution amending the attached Fayetteville Police Department Policies

$0		
Cost of this request	Category / Project Budget	Program Category / Project Name
Account Number	Funds Used to Date	Program / Project Category Name
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ Budget Adjustment Attached ☐

Department Director — Date 9-15-09

City Attorney — Date 9/18/09

Finance and Internal Service Director — Date 9-18-2009

Chief of Staff — Date 9-23-09

Mayor — Date 9/22/09

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED 9-15-09 KG

Received in Mayor's Office — ENTERED 9/18/09 PH.

Comments:

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Lioneld Jordan and Members of the City Council

FROM: Greg Tabor, Chief of Police

DATE: September 14, 2009

SUBJECT: Policy Amendments

Recommendation: Council approves a resolution amending the following Fayetteville Police Department Policies

(1) 33.1.1 – "Physical Fitness for Law Enforcement Officers"
(2) 1.3.1 - "Use of Force"
(4) 1.3.4 - "Less-Lethal Weapons/Defensive Tactics"
(5) 26.1.1 - "Disciplinary Matters and Award Procedures"
(6) 26.1.2 - "Harassment and Discrimination in the Workplace"

Background: The current Fayetteville Police Department Policies were approved by council resolution #3-99 on January 5th, 1999.

Discussion: The department is currently in the process of reviewing all policies and updating as necessary to comply with Commission on Accreditation for Law Enforcement Agencies (CALEA) standards, to conform to changes in Federal, State and local law and to match current Fayetteville Police Department practices.

Budget Impact: None

RESOLUTION NO. _____

A RESOLUTION APPROVING AND ADOPTING AMENDMENTS TO THE FAYETTEVILLE POLICE DEPARTMENT'S POLICIES, PROCEDURES & RULES MANUAL.

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 and adopts the following amended sections of the Fayetteville Police Department's Policies, Procedures & Rules Manual:

- 33.1.1 – "Physical Fitness of Law Enforcement Officers"
- 1.3.1 – "Use of Force"
- 1.3.4 – "Less-Lethal Weapons/Defensive Tactics"
- 26.1.1 – " Disciplinary Matter and Award Procedures"
- 26.1.2 – "Harassment and Discrimination in the Workplace"
- 46.2.1 – "Emergency Response Team"

A copy of these amendments, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 33.1.1
Subject **PHYSICAL FITNESS FOR LAW ENFORCEMENT OFFICERS**		
Reference	Special Instructions	
Distribution All Personnel	Reevaluation Date 1 Year	No.Pages -7-

Comment: Main purpose of revision of this policy was make our current practices match the policy. In the past, the policy called for mandatory participation and mandatory compliance. The consequences of not complying were too difficult to handle due to the high number of employees and limited number of trainers, training time etc.

The revised policy calls for mandatory participation with voluntary compliance and also adds an incentive to participants to pass.

I. PURPOSE

The purpose of this policy is to establish standards and programs to ensure the physical readiness of officers to perform the frequent and critical physically demanding essential functions of their jobs.

II. DISCUSSION

Physical fitness for law enforcement officers is job-related and fitness tests have undergone court scrutiny and have been accepted as job related.

Another concern is employee health. With the initiation of this program an effort will be made to improve employee physical fitness, employee performance and safety and to reduce the threat of illness caused by lack of physical fitness.

The goal of the Department is to improve employee performance and safety, and to reduce the possibility of premature death, heart attack, stroke, respiratory disease or other illness related to lack of physical activity.

III. POLICY

A. All entry level and sworn personnel shall comply with the fitness standards set forth within this policy. [Calea 22.3.2]

1. Entry level personnel are those applying for a police officer position with the City of Fayetteville.

2. For the purposes of this policy, sworn personnel are those sworn employees at or below the rank of Lieutenant.

3. Testing will be conducted bi-annually on dates set by the fitness coordinators.

B. **Physical Fitness Testing Procedures For Applicants.**

1. The Fayetteville Police Department will furnish details of the fitness testing requirements after an application for employment has been submitted.

2. Prior to a final offer of employment, those applicants still eligible shall be subject to a standard physical fitness test as designated by this policy.

3. Failure to meet any of the established Physical Fitness Standards will result in no offer of employment to the applicant.

C. **Physical Fitness Testing For Incumbent Sworn personnel.**

1. Incumbent sworn personnel will be assessed to determine their level of fitness.

2. Fitness testing will be mandatory for all sworn personnel and fitness hours will be given based on levels of fitness. The following components will be dealt with during each fitness test:

3. Medical screening

(a) Officers will complete a Medical History Questionnaire, Physical Activity Readiness Questionnaire and sign a consent form before starting the fitness test. If screening methods determine the officer should not take the test, he/she will be scheduled to take the fitness test the following day. If, on the following day, the screening methods determine the officer should not take the test, he/she may be placed on light duty in accordance with policy 16.2.3, "Temporary Light Duty".

Comment: Language added as a safety measure of pre-screening personnel prior to the fitness exam.

4. Fitness testing

(a) The Physical Fitness Test will be administered in the following order:

1. Sit and Reach Test
2. Bench Press or Push up Test
3. Leg Press or Vertical Jump Test
4. One Minute Sit Up Test
5. 1.5 Mile Run
6. 300 Meter Run

5. Individualized exercise program

(a) Fitness coordinators will give a recommended exercise program to officers who do not meet the minimum physical fitness standards of the department.

(b) Officers suffering from an illness, which would prevent them from participating in a fitness test, must contact the on-duty supervisor to advise of their condition and inability to participate. Upon returning to work the officer must contact a physical fitness coordinator to arrange a make-up test.

(c) Officers suffering from an injury will need a doctor's note identifying the injury along with a projected date of recovery. If the injury prevents an officer from participating in the testing, he/she may be placed on light duty in accordance with Policy 16.2.3, "Temporary Light Duty".

(d) Officers with an injury, illness or other physical condition with lengthy recovery periods preventing them from participating in fitness testing may be provided light duty assignments, as per Policy 16.2.3, "Temporary Light Duty". At such time a physician determines the officer's condition will not improve to a level enabling them to participate in fitness testing, then a determination will be made by the Chief of Police as to whether the officer should obtain a letter from a physician evaluating the employee's ability to perform his/her essential job functions.

Comment: Language added

The following are considered minimum standards (ERT members shall exceed minimum standards by 20%):

Fitness Tests	**Minimum**	**20%**
Sit and Reach Test		
1 RM Bench Press (ratio)	0.64	0.84
OR Push-up Test (maximum #)	25	30
1 RM Leg Press (ratio)	1.25	1.45
OR Vertical jump (inches)	16"	19"
One Minute Sit-Up Test	29	35
1.5 Mile Run (min./sec.)	16.28	13.10
300 Meter Run (seconds)	71	57

D. **The Compliance Process**

Comment: Compliance section was pared down to only call for voluntary participation of the exam with the employee giving a "serious attempt" to complete it.

All sworn personnel are required to participate and give an effort while taking the fitness test. For the purpose of this policy, effort is defined as a serious attempt.

E. **Incentive Plan**

Comment: incentive plan added

Incentive plans are in place for sworn personnel who comply with minimum fitness standards. Fitness hours will be awarded to officers based on individual fitness levels. Fitness hours are time off work that is kept separate from compensation time and have no cash value. Fitness hours expire one year from the issuance date and can only be taken with the shift supervisor's approval.

1. Officers scoring at least minimum standards in all fitness categories will be awarded four fitness hours.

2. Officers scoring 10% above the minimum standards in all fitness categories will be awarded six fitness hours.

3. Officers scoring 20% above the minimum standards in all categories will be awarded eight fitness hours.

4. Officers scoring 30% above the minimum standards in all categories will be awarded twelve fitness hours.

Percentage levels	**10%**	**20%**	**30%**
Sit / Reach Test			
Bench Press (ratio)	.74	.84	.94
Maximum Push Up Test	28	30	33
Leg Press (ratio)	1.35	1.45	1.55
Vertical Jump	17.5"	19"	21"
One Minute Sit up Test	32	35	38
1.5 Mile Run	14:49	13:10	11:32
300 Meter Run	64 sec.	57 sec.	50 sec.

F. **Procedures for Fitness Testing**

1. The One Repetition Maximum (RM) **Bench Press** - This test measures the absolute strength in the upper body. These muscles are used while lifting, carrying, or pushing heavy objects. The bench press may be substituted with the push-up test.

a. Two experienced spotters must be used, one on each end of the bar.

b. Suggested starting weight is about 2/3 of body weight.

c. With the subject in the supine position, spotters lower the bar to level of subject's chest. Subject should have a shoulder width grip on bar.

d. Spotters then release the bar and the subject presses to full extension while exhaling.

e. Spotters take the bar, place it on the rack and increase the poundage.

f. Convert the 1RM free weight bench press score to the estimated 1RM Universal bench press score by using the following formulas:

Estimated 1RM Universal = (1.016 x free weight 1RM) + 18.41

2. The **Maximum Push-up Test** - This test measures the muscular endurance of the upper body (anterior deltoid, pectoralis major and triceps), which is used while lifting, carrying, and pushing. The push-up test may be substituted with the bench press.

a. The hands are placed about shoulder-width apart, with fingers pointing forward. The administrator places one fist on the floor below the subject's chest. If a male is testing a female, a 3-inch sponge may be placed under the sternum to substitute for a fist.

b. Starting from the up position (elbows extended), the subject must keep their back straight at all times and lower their body to the floor until their chest touches the administrator's fist. The subject then returns to the up position. This is one repetition.

c. Resting is only allowed in the up position.

d. The total number of correct push-ups performed is recorded as the score.

3. **Leg Press** - This test measures the absolute strength in the lower body. The leg press test may be substituted with the vertical jump.

a. Load weight stack with body weight.

b. The knee angle is set at 70 degrees. Before measuring the angle, be sure the subject is properly seated in the chair with the ball of the foot on the crease of the pedal.

c. Press the weight once for an easy warm-up and breath out on exertion.

4. The **Vertical Jump** - This test measures explosive strength in the lower body, which is used while lifting, carrying, pushing, dragging, and extracting. The vertical jump test may be substituted with the leg press.

a. This test is administered with shoes on.

b. Stand adjacent to and perpendicular to the wall with dominant hand side closest to the wall.

c. With heels flat and slightly apart, reach up, extend arm fully and touch the wall with fingertips.

d. Bend knees, crouch down, arms down by side and jump vertically with maximal effort. Touch the wall with fingertips at height of jump. It is also permissible to keep one foot stationary with the other foot behind. The back foot is then brought forward, in line with the stationary foot, then duplicate the original procedure.

e. A measurement of the distance between the subject standing reach and the farthest point touched during the vertical jump will be taken. The measurement is taken to the nearest 1/2 inch.

f. Perform 3 trials using the best score for the test.

5. The **One Minute Sit-up Test** - This test measures abdominal muscle endurance. These muscles are used while lifting, carrying, and dragging.

a. The subject starts by lying on their back, knees bent, heels flat on the floor, with their fingers touching their head.

b. A partner holds their feet down firmly.

c. The subject then performs as many correct sit-ups as possible in one minute.

d. In the up position, the subject should touch his/her elbows to his/her knees and then return until their shoulder blades touch the floor.

e. The score is the total number of correct sit-ups. Any resting should be done in the up position.

f. Breathing should be as normal as possible and making sure the subject does not hold their breath.

g. Neck remains in the neutral position.

6. The **1.5-Mile Run** - The purpose of this test is to measure the aerobic power or cardiovascular endurance of the participant. It tests pursuit tasks and use of force that lasts over one to two minutes.

a. Participants should warm up and stretch thoroughly prior to the test.

b. The participant runs 1.5 miles as fast as possible.

c. Upon completion, a mandatory cool down period is enforced. The participants should walk slowly for about 5 minutes immediately after the run to prevent venous pooling (i.e. pooling of the blood in the lower extremities which reduces the return of blood to the heart and may cause cardiac arrhythmias).

7. The **300-Meter Run** - This test measures anaerobic power, which is used during sprints or any short intense use of force.

a. Participants should warm up and stretch thoroughly prior to the test.

b. The participant runs 300 meters as fast as possible.

c. A mandatory cool down is enforced, as with the 1.5 mile run.

Comment: Several definitions were deleted from the end of the old policy as they only had a use by the fitness coordinators and not the employee.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 1.3.1
Subject **USE OF FORCE**		
Reference 1.3.4,41.3.5	Special Instructions	
Distribution All Personnel	Reevaluation Date 1-Year	No.Pages -9-

Comment: References are new, they refer to the "Less than Lethal" policy (1.3.4) and Uniforms/Equipment (41.3.5)

I. PURPOSE

The purpose of this directive is to state the Fayetteville Police Department policy regarding the use of force, including deadly force, less lethal force and defensive tactics.

II. DISCUSSION

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection must at all times be secondary to the protection of life. The officer's responsibility for protecting life must include his own.

III. DEFINITION

"Deadly Force", as used in this policy is defined as that force which may cause death or grave injury or which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.

"Physical force", as used in this policy, is defined as any bodily impact, restraint, confinement or the threat thereof.

"Reasonable belief", as used in this policy, is defined as the facts or circumstances the officer knows, or should know, are such

as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

"Serious physical injury", as used in this policy, is defined as a bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

Comment: Definitions have been moved from another portion of old policy

IV. POLICY

It shall be the policy of the Fayetteville Police Department that its officers shall not use more force in any situation than is reasonably necessary under the circumstances.[Calea 1.3.1]

Comment: CALEA standard requires a policy statement on Use of Force

A. Use of Deadly Force

1. An officer may use deadly force to protect him or others if he has reasonable belief of immediate threat of death or serious physical injury. [Calea 1.3.2]

2. The use of deadly force should be prohibited in the apprehension of misdemeanants, since the value of human life far outweighs the gravity of a misdemeanor offense.

Comment: "flatly" omitted

3. Deadly force shall never be used on mere suspicion that a crime, no matter how serious, was committed or that the person being pursued committed the crime. An officer shall either have witnessed the crime or have sufficient information to know, as a virtual certainty, that the suspect committed an offense for which the use of deadly force is permissible.

4. Officers shall not be permitted to fire at felony suspects when the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force or when there is substantial danger to innocent bystanders. Although the requirement of using lesser force, when possible, is a legal rule, the other limitations are based on sound public policy. To risk the life of innocent persons for the purpose of apprehending a felon cannot be justified.

5. Officers shall not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another person.

6. Officers shall not fire their weapons to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger

to innocent bystanders, the officer should shoot at "center body mass."

7. An officer may use deadly force to effect the capture or prevent the escape if the officer reasonably believes that the suspect has committed a felony involving the use or threatened use of deadly force and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

8. In order to protect the community's interest when officers may have exceeded the scope of their authority in the use of deadly force and to shield officers who have not exceeded the scope of their authority from possible confrontations with the community, officers whose use of force results in death or serious physical injury shall be relieved from line-duty assignment pending administrative review.[Calea 1.3.8]

9. The killing of an animal is justified by the following conditions:

a. For self-defense,
b. To prevent substantial harm to the officer or another, or
c. When the animal is so badly injured that humanity requires its relief from further suffering.

A seriously wounded or injured animal may be destroyed upon approval from a supervisor.

Comment: language omitted regarding assistance from other agencies

The destruction of vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others.

B. Use of Physical Force and Less-lethal Weapons

All commissioned Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Officers will be issued copies of 1.3.1 and will be instructed in this policy.[Calea 1.3.12] Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when

warranted, but only in accordance with the guidelines set forth here.

All departmentally approved less lethal devices are deployed as additional police tools and are not intended to replace firearms or self-defense techniques. Officers choosing to use these devices **should not** compromise their safety.

Further reference may be made to section 1.3.4 regarding Less Lethal Weapons and Defensive Tactics.

Comment: language taken from previous document and added

C. Firearms

1. Issuance of "Use of Force" Policy:

All officers of the Fayetteville Police Department shall be issued individual copies of and receive instruction on the department's policy regarding use of deadly force prior to being issued a firearm.[Calea 1.3.12] Officers will receive in-service training on the department's use of force policy on an annual basis.[Calea 1.3.11]

2. Proficiency in Use of Agency-authorized Firearms:

Qualification with the issued service weapon is an essential job function of a police officer with the City of Fayetteville. Failure to qualify may result in the imposition of discipline, up to and including termination of employment. Additionally, failure to qualify with any other department-approved weapon would prohibit that person from being allowed to carry that particular weapon. [Calea 1.3.10] A certified weapons instructor shall conduct training and qualification. [Calea 1.3.11 a.]

Comment: language added

a. Officers shall qualify with the issued service weapon four times each year, at least one of which will meet the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. [Calea 1.3.11]

b. On all other qualification relays, Officers shall qualify with a score equal to or better than the established standard set by the Chief of Police in consultation with the Firearms Instructors.

c. Officers certified on the department-approved shotgun or rifle shall qualify annually.

d. All firearms training and qualifications scores, including remedial training if necessary, will be documented and maintained

by the firearms division until an officer separates from the department.[Calea 1.3.11 b.]

(1) An officer who fails to qualify with his/her issued service weapon after two consecutive attempts shall be referred for immediate remedial training by a certified firearms instructor.

(2) The firearms instructor providing the remedial training shall notify the officer's immediate supervisor and Chief of Police in the event the officer is still unable to qualify at the conclusion of the extra training session. Upon such notification, the supervisor shall immediately relieve the unqualified officer of the issued service weapon and patrol duty, with pay. The unqualified officer will be directed to report to the training division the next working day for additional remedial training. The officer's authority to carry a firearm shall remain revoked until such time as the officer qualifies or that the determination is made that the officer is not responding to further training. [Calea 1.3.11.c]

(3) Any officer who fails to qualify and receives remedial training more than twice during a calendar year shall be subject to disciplinary action. If an unqualified officer does not respond satisfactorily to remedial training and remains unqualified, the Chief of Police shall be notified in writing. At such time, the officer will be referred for termination.

Comment: language added to reflect current practice and CALEA standards

d. Officers shall attain and demonstrate knowledge of the laws concerning the use of firearms and be familiar with recognized safe-handling procedures for the use of these weapons.

e. Any officer returning to duty after an absence exceeding three months shall report to the training division for remedial training and requalification prior to being permitted to return to full duty.

3. Except for general maintenance, storage or authorized training, officers shall not draw or exhibit their firearm unless circumstances create strong reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.

4. Warning Shots:

Officers are not justified in using a firearm to fire a warning shot and shall never use warning shots for any purpose. Warning shots endanger the lives of innocent bystanders and may also prompt a suspect to return fire.[Calea 1.3.3]

5. Off-Duty Possession of Weapons:

It shall be the policy of the Fayetteville Police Department to permit full-time sworn members of the department to possess and carry a concealed weapon while off-duty within the corporate limits of Fayetteville. Officers of the Fayetteville Police Department should also be aware that Federal Law known as the Law Enforcement Officers Safety Act of 2004 provides certified law enforcement officers with the right to carry a concealed firearm in any jurisdiction in the United States.

Comment: language added

a. Officers are not required to carry a weapon while off-duty, but may do so at their option.

b. Officers exercising the option to carry a weapon while off-duty are authorized to carry their issued weapon.

c. Authorization for officers to carry weapons while off-duty shall be subject to the following conditions:

(1) Officers will be required to have in their possession the department-issued badge and official identification card.
(2) Officers in plain clothes wearing their firearms exposed to the public view shall display their department badge near the firearm in a manner that is clearly visible to the public unless special circumstances exist.
(3) Officers who choose to carry a weapon other than one issued by the police department, shall qualify to demonstrate proficiency in the use of that weapon on an annual basis at their own expense.

6. Department-issued Weapons and Ammunition:

Reference may be made to Fayetteville Police Department Policy 41.3.5 for department-issued weapons and ammunition.

A. All department-issued firearms will be inspected on an annual basis by a certified armorer and must be approved by the armorer before being issued and/or carried.[Calea 1.3.9 c.,d.,e.]
(1) The firearms division will maintain weapons inspections reports.
(2) Weapons deemed irreparable will be removed from service with a report indicating such status.
(3) The firearms division will maintain a record on all weapons in service to include inspection date(s) and maintenance.

Comment: language added to reflect current practice and CALEA standards

B. Officer Responsibility for Department-issued Firearm.

(1) Officers must take reasonable and adequate care of any firearm issued to them.
(2) In the event a firearm is lost, damaged, destroyed, or stolen, the officer may be subject to financial liability and/or dismissed if a preponderance of evidence establishes negligence or willful destruction or damage of the firearm by the officer.
(3) In the event of the loss of a department-issued firearm, the officer will immediately notify the shift supervisor who will in turn notify the Chief of Police. The supervisor will also notify local law enforcement authorities of the firearm loss and ensure that the loss is reported through the department's ACIC/NCIC terminal.
(4) Officers may choose to leave their issued weapons in their locked lockers at the department. If officers choose to remove their issued weapon from the department while off duty, it is recommended they be stored in a locked box, separate from the ammunition.[Calea 1.3.9 f.]

Comment: language added

7. Discharge of Weapon:

If an officer, on or off duty, fires a department-issued weapon (except training purposes such as range qualifications) or in the event of an accidental discharge the officer shall comply with the following:

a. The officer who fired the weapon shall notify the shift supervisor as soon as practicable after the firing has taken place.

b. The supervisor shall make a preliminary investigation each time an officer under his command fires a weapon.

c. The supervisor shall cause a report to be filed immediately with the Chief of Police regarding the firing of any weapon by police personnel.[Calea 1.3.6]

d. If during the performance of duty or on any occasion an officer of the Fayetteville Police Department fires a weapon and in doing so wounds or kills a suspect or perpetrator of a crime, the following procedure is to be followed immediately:

(1) Medical aid, to the extent possible, should be given to anyone injured.[Calea 1.3.5]
(2) The shift supervisor is to be notified immediately.
(3) The shift supervisor will notify the Chief of Police immediately.
(4) A shooting team, the members of which will be designated by the Chief of Police, will be called to the scene immediately.

Comment: language added

(5) This shooting team will be responsible for conducting a thorough investigation into the circumstances surrounding the shooting. The shooting team will, at the conclusion of the investigation, submit a report to the Chief of Police including the relevant facts and circumstances surrounding the incident and a conclusion as to whether the discharge violates departmental policy.

(6) This shooting team will be functioning with the full authority of the Chief of Police. This team will be in complete control of the internal investigation. All officers including shift supervisors shall give this team their full cooperation. No one shall interfere with such an investigation.

Comment: language changed from "entire" to "internal"

(7) If the facts of the incident support a conclusion that the shot was the result of negligence, the officer shall be required to undergo firearms certification training again.

D. Use of Force Reports

The purpose of this section is to establish specific guidelines that define the situations when the Use of Force Report must be completed. Not every touching by an officer requires a report; circumstances that require a report are outlined elsewhere in this order.[Calea 1.3.6]

All commissioned Police Officers of the Fayetteville Police Department are directed to complete the "Use of Force" report when the following criteria is met and turn it in to his supervisor before the end of his shift.

1. Situations that require Supervisor notification and completion of the Use of Force Report:[Calea 1.3.6]

a. An officer exercising police authority uses force which causes any visible or apparent physical injury, or which results in the subject saying that he or she was injured.

b. An officer exercising police authority uses any object, including, but not limited to, a baton, flashlight, hand, fist, or foot to strike a blow to a subject.

c. An officer exercising police authority bodily removes or drags a struggling subject from one place to another, or forcibly places or keeps a person in a prone position.

d. An officer exercising police authority uses force during or after which a subject loses consciousness.

e. An officer uses any aerosol irritant or inflammatory agent (see 1.3.4).

f. An officer uses a Conducted Energy Weapon (see 1.3.4).

g. An officer discharges his or her firearm; regardless of duty status and regardless of whether the discharge was accidental or intentional. (Exceptions: lawful hunting activity, range activity, and other lawful and safe target practice).

h. An officer points a gun at anyone.

2. Use of Force Reports will be submitted by the division supervisor to the department's administration:[Calea 1.3.6]

a. Each Use of Force Report will be reviewed by the division's respective captain and by the Chief's designated head of Office of Professional Standards (OPS).[Calea 1.3.7]

b. The designated head of OPS will conduct an annual review and analysis of all Use of Force Reports and report the analysis to the Chief.[Calea 1.3.13]

Comment: language from Use of Force Reports general order streamlined into this policy

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 1.3.4
Subject **Less-Lethal Weapons/Defensive Tactics**		
Reference 1.3.1	Special Instructions	
Distribution All Personnel	Reevaluation Date 1-Year	No.Pages -13-

Comment: This policy draft streamlined the old "Non Lethal Defensive Tactics" policy with general orders regarding the use of pepper spray and tasers.

I. PURPOSE

The purpose of this directive is to establish specific guidelines for the use of authorized less-lethal weapons and defensive tactics.[Calea 1.3.4]

II. DISCUSSION

All Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons. Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

III. POLICY

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with the guidelines set forth here.

Comment: Language is a combination of text from the above referenced documents, now streamlined into one.

A. Defensive Tactics

The *Use of Force Continuum* is included as a guide in the appropriate use of force. It is recognized that it cannot be rigidly applied in rapidly unfolding and fluid situations. Officers should generally use the level of force that can reasonably be expected to succeed in controlling the situation. Officers are not required to move in a hierarchical fashion through all the levels

of control, but instead, should use that level of force that is appropriate and reasonable under existing circumstances.
The Force Continuum contains areas of control, which will be used by an officer, and the levels of resistance, which are used by the offender.

1. Levels of Control:

a. Officer Presence

The professional appearance and uniform of a police officer.

b. Verbal Direction

The appropriate verbal response and commands used to attempt to direct the action of a suspect.

c. Pepper Aerosol Restraint Spray/Conducted Energy Weapon

The OC aerosol spray and Conducted Energy Weapon provides officers with additional use-of-force options against aggressive animals or for gaining compliance of resistant or aggressive individuals during arrest, detention and other enforcement situations that occur in the line of duty.

d. Empty Hand

Soft empty hand techniques are designed to control Passive or Defensive Resistance. They are used when verbal direction/commands are not effective and there is non-compliance with lawful orders. Pressure Point Control Tactics (PPCT) is the department approved defensive tactics system. Soft empty hand control techniques include strength techniques, joint locks, pressure points or distraction techniques, which are hand and leg strikes to specific motor nerve points.

Hard Empty Hand Control techniques are designed to control Active Aggression, but can be used to control Defensive Resistance when lower forms of control have failed or when the officer believes lower forms of control will fail.

e. Intermediate Weapons

An intermediate weapon is any tool used when empty hand control is not enough or would be dangerous for the officers to attempt, and deadly force is not justified. The department issued intermediate weapon, or impact weapon, is the expandable baton. Officers have discretion to use the expandable baton as a defensive tactics tool

to counter resistance and assaultive behavior.

f. Deadly/lethal force

Force likely to cause death or serious physical injury.

2. Levels of Resistance:

a. Psychological Intimidation

The suspect attempts to intimidate the officers psychologically. These are non-verbal cues such as suspect attitude or physical appearance or physical readiness.

b. Verbal Non-Compliance

This includes verbal threats from the suspect towards the officers. A suspect may not be resisting just by threatening the officer but may simply refuse to comply with orders, be unwilling to comply or ignore the officer completely.

c. Passive Resistance

The suspect makes no attempt to fight the officer or even pull away. He simply forces the officer to do all the work. An example would be the protestor who causes the officer to pick him up and carry him from the scene or the drunk driver who will not step from the car but must be physically pulled out.

d. Defensive Resistance

The suspect performs actions that attempt to prevent officers from controlling him, such as pulling away when handcuffing is attempted. He may simply move away from the officer or push the officer's hands away. The suspect makes no attempt to harm the officer, just tries to defeat the arrest.

e. Active Aggression.

The suspect attempts to harm the officer by physical actions such as striking or kicking him.

f. Aggravated Aggression

The suspect is attempting to harm the officer by use of a weapon or empty handed at a deadly force level.

3. De-escalation of Force:

Officers must immediately de-escalate down to empty hands or verbal commands after gaining compliance through the use of an intermediate weapon.

Officers, for their own protection, should understand and comply with the force continuum.

4. Training:

Officers must be certified in the use of the Conducted Energy Weapon (CEW), Pepper Spray and Pressure Point Control Tactics before authorization to use such defensive tactics.

Officers are required to attend refresher training on handgun retention and PPCT Tactics as scheduled by the Training Division.

B. Less-lethal Weapons

All Police Officers of the Fayetteville Police Department are directed to obtain certification to carry and use less lethal weapons as authorized by the Chief of Police. Less lethal weapons provide officers with additional use-of-force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty. It is the policy of this department that officers use less lethal weapons when warranted, but only in accordance with the guidelines of this policy set forth here. Less lethal weapons are not designed to be used in place of deadly force when deadly force is justified. Less lethal weapons are other tools in the use-of-force continuum to assist in preventing injury to officers and others.

Officers will receive in-service refresher training on the use of less lethal weapons on an annual basis. A certified weapons or tactics instructor will conduct refresher training. The training division will maintain documentation of refresher training. Remedial training, if necessary, will be given to any officer who is unable to demonstrate knowledge and proficiency of less lethal weapons prior to resuming official duties.[Calea 1.3.11]

1. Police Baton

a. Authorization

(1) Only certified officers who have successfully completed the PPCT certified Defensive Tactics Course are authorized to carry the police baton.

b. Usage Criteria

(1) The police baton may be used when empty hand control has failed, or the officer believes that empty hand control will be insufficient to establish control.

(2) The use of deadly force is not justified during the normal use of baton; however, during extreme circumstances when a suspect raises his aggression to a deadly force level, officers engaging a suspect with a baton would be permitted to use deadly force.

c. Usage Procedures

(1) Impact weapon strikes to the nerve motor points in the legs and arms are considered to be at the Intermediate Weapon level on the force continuum.

(2) Any impact weapon strikes to the head, throat or clavicle are considered to be deadly force.

(3) The two target areas on the arms for blocking points are:

(a) The Radial nerve motor point on the outside of the upper forearm.

(b) Median nerve motor point on the inside of the forearm.

(4) The three target areas for striking on the legs are:

(a) The Common Peroneal nerve motor point on the outside of the leg.

(b) The Femoral nerve motor point on the inside of the leg.

(c) The Tibial nerve motor point on the top of the calf muscle.

(5) Strikes should be delivered with maximum power in an effort to eliminate the need for multiple strikes, decrease the need to escalate in levels of control, and shorten the time span of the confrontation.

(6) After striking a subject, officers should employ other methods of follow-up control and ensure that the subject receives medical attention. [Calea 1.3.5]

2. Pepper Aerosol Restraint Spray

Oleoresin capsicum (OC) spray is the authorized pepper aerosol restraint spray.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry departmentally authorized OC while on duty. Plain-clothes officers whose normal duties/assignments may require them to make arrests or supervise detainees shall have available departmentally authorized OC spray.

(3) Uniformed officers shall carry only departmentally authorized OC canisters. Non-uniformed officers may carry OC in alternative devices authorized by the agency.

b. Usage Criteria

(1) OC spray is considered a use of force and shall be employed in a manner consistent with this agency's use-of-force policy. OC is a force option following verbal compliance tactics on the use of force continuum.

(2) OC may be used when:

(a) verbal dialogue has failed to bring about the subject's compliance, and

(b) the subject has signaled his intention to actively resist the officer's efforts to make the arrest.

(c) when confronted with an aggressive animal.

(3) Whenever practical and reasonable, officers should issue a verbal warning prior to using OC against a suspect.

(4) An officer may use deadly force to protect himself from the use or threatened use of OC when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) Once a suspect is compliant, the use of OC spray is no longer justified.

c. Usage Procedures

(1) Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.

(2) An officer should maintain a safe distance from the suspect of between two and ten feet.

(3) A single spray burst of one second should be directed at the suspect's eyes, nose, and mouth.

(4) Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.

d. Effects of OC and Officer Response

(1) Within several seconds of being sprayed by OC, a suspect will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought process.

(2) The effects of OC spray vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect - to include, if necessary, other force options consistent with agency policy-if he does not respond sufficiently to the spray and cannot otherwise be subdued.

(3) Immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, gagging, profuse sweating and loss of consciousness. Upon observing these or other medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid or transport to a local medical facility.[Calea 1.3.5]

(4) Suspects who have been sprayed shall be monitored continuously for the ill effects of the OC spray. It shall be the responsibility of the officer affecting the arrest to either monitor the suspect or alert detention center personnel the suspect has been sprayed. In the event the officer was injured during the arrest, the supervisor will assign another officer to monitor the suspect.
(5) Officers shall provide assurance to suspects who have been sprayed that the effects are temporary and encourage them to relax.

(6) Air will normally begin reducing the effects of OC spray within fifteen minutes of exposure. However, once the suspect has been restrained, officers shall assist him by rinsing and drying the exposed area to the extent possible.

(7) Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent. All such incidents shall be reported as soon as possible including the recording of the bystanders name, date of birth, and address to the immediate supervisor.

e. Reporting Procedures

(1) Accidental discharges as well as intentional uses of OC spray against an individual in an enforcement capacity shall be reported to the officer's immediate supervisor as soon as possible.

(2) A written report of an accidental discharge, which does not affect an individual, must be completed and turned into the officer's immediate supervisor before the end of shift when accidental discharge occurred.[Calea 1.3.6]

(3) A use-of-force report shall be completed following all discharges of OC spray except during testing, malfunction or accidental discharge and turned into the officer's immediate supervisor before the end of shift in which the spray was used.[Calea 1.3.6]

(4) Off-duty officers discharging OC spray are subject to the same reporting requirements as on-duty officers. The immediate supervisor shall be the shift supervisor at the time of the discharge.[Calea 1.3.6]

f. Replacement

(1) Each officer assigned an OC spray device shall be responsible for maintaining it in an operational and charged state. If an OC device becomes damaged, inoperable, or empty, the assigned officer shall report to their immediate supervisor in writing and request a replacement device.

(2) Replacements of OC spray canisters shall occur when the unit is less than half full, as determined by weighing the canister.

(3) OC canisters shall be inspected and weighed biannually by shift sergeants and maintain a record of this fact.

(4) Unexplained depletion of OC canisters shall require an investigation and written report by the officer's supervisor to the Chief of Police.

3. Conducted Energy Weapon

The Conducted Energy Weapon (CEW) will be used at the same level in the use-of-force continuum as Pepper Aerosol Restraint Spray. It will be the officer's discretion as to which device is used.

a. Authorization

(1) Only certified officers who have completed the prescribed course of instruction on the use of the CEW are authorized to carry or use the device. Officers must demonstrate proficiency in the use of the CEW during the prescribed course of instruction.[Calea 1.3.10] Officers must receive in-service training on the CEW and demonstrate proficiency with the CEW on an annual basis after receiving the initial prescribed course of instruction. [Calea 1.3.11]

(2) Uniformed officers whose normal duties/assignments may require them to make arrests or supervise detainees shall be required to carry authorized CEW units on their duty belts while on duty.

(3) Uniformed officers shall carry only department authorized CEWs in the prescribed manner on their duty belts. Non-uniformed officers may carry the CEW in alternative forms authorized by the agency.

b. Usage Criteria

(1) At the beginning of each shift, before an officer places the CEW on the duty belt, a function test will be completed on each unit. This will be accomplished by turning the safety to the ON position, checking the battery level on the Central Information Display, verifying the laser sight system is operational, and by performing an arc display for a minimum of one second. On any occasion where malfunctions are found, the unit shall be removed from service and forwarded to a CEW instructor for servicing and troubleshooting.

(2) Use of the CEW is considered a use of force and shall be deployed in a manner consistent with this agency's use-of-force policy. The CEW is a force option following verbal direction on the use-of-force continuum.

(3) Whenever practical and reasonable officers should issue a verbal warning prior to using the CEW against a suspect. The CEW will not be used in a punitive or coercive manner. Officers should consider the suspect's age and physical ability to resist arrest in making the decision to use the CEW.

(4) An officer may use deadly force to protect himself or others from the use or threatened use of a CEW when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.

(5) The CEW is not designed, nor expected, to be used in place of deadly force when deadly force is justified. The CEW is another tool in the use-of-force continuum to assist in preventing injury to officers and others.

(6) Once a suspect is compliant the use of the CEW is no longer justified.

c. Usage Procedures

(1) The CEW operates much like a handgun. It is equipped with standard sights and a laser sight system. The laser dot will be the point of impact for the top probe. The CEW fires probes in line with an eight-degree probe spread. The CEW must be held level on vertical targets. The exception to this rule is on an angled or prone target where the CEW should be tilted to allow the probes to strike the target properly. An example of this would be if the target were lying on the ground or behind some type of barrier. The CEW should be aimed at center mass or the legs. Do not aim at the head or throat of an individual. The CEW may also be applied as a Drive Stun as a distracting or breaking maneuver to gain control and effect compliance of a suspect. In addition, the CEW may be applied as a Drive Stun after the probes have been deployed or a non-deployed cartridge has been removed.

(2) Officers should maintain a safe distance from the suspect. The optimum shot range is seven to fifteen feet. If the suspect is running, the officer must keep pace with the suspect to prevent the CEW wires from breaking.

(3) When the CEW is deployed it should complete the full five-second cycle without interruption. Typically the initial deployment changes the behavior of the suspect. After the CEW is deployed, the officer should assess and evaluate the suspect while giving verbal commands. If the suspect continues to be non-compliant, additional applications may be given. The suspect should be handcuffed as soon as practical while disabled by the CEW to minimize the number of deployment cycles.

(4) The CEW is prohibited from being used:

(a) In a punitive or coercive manner.

(b) On a handcuffed or secured prisoner absent assaultive behavior that cannot be reasonably dealt with.

(c) On any suspect who does not demonstrate his or her overt intention to use violence or force against the officer or another person(s).

(d) In an environment where an officer knows that a potentially flammable, volatile or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, propane or a clandestine laboratory.

(e) In any environment where the subject's fall could reasonably result in death or serious injury (e.g. on an elevated structure or in a location with sharp objects).

(f) On the operator of a moving vehicle.

(5) As soon after deployment as possible, CDC should be notified that the CEW has been deployed.

(6) Deployed cartridges must be submitted to evidence and handled with caution as explained and instructed in the CEW users course. Deployed cartridges are considered to be a biohazard and must be handled with extreme caution.

(7) CEWs equipped with cameras will automatically record a video recording each time the CEW is activated in the field:

(a) After a CEW is deployed, officers are required to provide the CEW to a patrol supervisor in order to preserve the video.

(b) Patrol supervisors, provided with the required passwords, are to create a folder within the network drive and upload the CEW camera video in a space designated by the IT Manager. After the upload, supervisors are restricted by the IT Manager from any actions other than viewing the video.

d. Effects of the CEW

(1) The CEW is a Conducted Energy Weapon that uses propelled wires to conduct energy that affects the sensory and motor functions of the central nervous system resulting in incapacitation and do not rely on pain compliance. The CEW creates Electro-Muscular Disruption and causes the contraction of the muscles and overrides the central nervous system.

(2) After deployment the suspect may fall immediately to the ground, which is the greatest risk of injury to the suspect.

(3) The CEW will cause slight signature marks that resemble surface burns, appear red or may blister.

(4) The CEW does not damage nerve tissue, does not cause serious burns and does not cause electrocution in a wet environment.

e. Reporting Procedures

(1) Every deployment of the CEW will require the officer to complete a use of force report. The only exception to this will be during training classes (and/or inspections). A supplemental page for the CEW must be attached to the use of force report. This page will be for documenting the location on a person's body where the CEW probes made contact.[Calea 1.3.6]

(2) The use of force report must indicate if multiple deployments occurred and the justification for multiple deployments.[Calea 1.3.6]

(3) If an officer performs an "Arc Display" to gain control of a suspect or crowd, a use of force form must be completed explaining the reason for the display.

(4) If an accidental discharge occurs a use of force report must be completed explaining the circumstances of the discharge.

(5) A photograph of the individual and the area or areas where probes penetrated the skin of the individual must be taken of each person on whom a CEW is used. The photos will be submitted to evidence with the used air cartridge and probes.

(6) The CEW has a built in microprocessor that records the date, time, duration of cycle and the battery status of each pull of the trigger for the last 2000 trigger pulls. The supervisor in charge of CEW procedures shall maintain a data download logbook on each CEW. The logbook shall be maintained for quality control purposes.

f. Probe Removal [Calea 1.3.5]

(1) CEW probes should be removed from an individual as soon as possible after the person has been handcuffed or properly restrained.

(2) As soon as possible after the CEW has been deployed on an individual, dispatch will be contacted and request medical services personnel to respond to the scene for probe removal.

[Calea 1.3.5]

(3) If any of the probes are located in the head, neck, breast(females only) or the groin area of an individual and medical services personnel is not able to remove the probes; the individual will be transported to WRMC for probe removal.

(4) After the probes have been removed, the probes and spent cartridge will be turned over to the officer who deployed the cartridge for submission to evidence.

Comment: This section is the combination of the separate general orders on the usage of pepper spray, taser and old policy regarding the police baton.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 26.1.1
Subject **DISCIPLINARY MATTERS & AWARD PROCEDURES**		
Reference: See 52.1.1, 1.3.1, 41.1.1, 26.1.2	Special Instructions	
Distribution All Personnel	Reevaluation Date 1-Year	No.Pages -8-

I. PURPOSE

Effective discipline is a positive process when its perceived purpose is to train or develop by instruction. Among the programs having an impact on discipline in a law enforcement agency are selection, training, direction, supervision, and accountability. These elements are inter-dependent, and a weakness in any one is damaging to effective discipline. Many standards bearing on a disciplinary system are included in other chapters relating to selection, training, and direction. Therefore, the purpose of this directive is to focus on the accountability component of a disciplinary system.

II. DISCUSSION

It shall be the policy of the Fayetteville Police Department to follow and abide by the disciplinary policies and procedures in effect and addressed in the rules and regulations of the Civil Service Commission of the City of Fayetteville. An employee whose work becomes unsatisfactory should immediately be notified by his/her supervisor in what way the work is deficient and what must be done if work performance is to be judged satisfactory. [Calea 26.1.5] An employee who is suspended or dismissed for unsatisfactory performance of duties should normally have received three warnings:

Supervisor Counseling - an oral warning from the employee's supervisor. The supervisor must record the dates of the discussions with the employee, the performance deficiencies discussed and the corrective actions required. [Calea 26.1.5]

The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Record of an Oral Reprimand - an oral warning with a follow-up letter to the employee that sets forth the points covered in their discussion. The Chief of Police shall have authorized a written record of an oral reprimand. The supervisor shall keep a record of a written record of an oral reprimand. The supervisor should maintain this record for the duration of the employee's performance evaluation period.[Calea 26.1.8]

Written Reprimand - a written warning from the Department Chief serving notice upon the employee that noted deficiencies must be corrected immediately in order to avoid disciplinary action up to and including dismissal. A written reprimand shall be placed in the employee's personnel file.[Calea 26.1.8]

Comment: Language amended to reflect long standing practices within the department

An employee who is suspended without pay or dismissed for unsatisfactory performance of duties or violations of policy shall receive a letter from the Department Chief outlining the noted performance deficiencies or policy violations, effective date of suspension or dismissal and a statement of the status of the employee's benefits during the suspension or dismissal. A copy of this letter shall be placed in the employee's personnel record. [Calea 26.1.7]

An employee so discharged, reduced in rank, or suspended for three days or more shall have the right, within ten calendar days from the date of such written notice, to request a trial through the Civil Service Commission. Reference should be made to the Civil Service Rules and Regulations. [Calea 26.1.6]

The Administrative Captain should maintain the departmental employee administrative file. It should contain any letters of commendation or appreciation, administrative letters and replies, results of any sustained punitive disciplinary action, as well as other pertinent information. Information in this file will be maintained indefinitely. [Calea 26.1.8]

It is suggested immediate supervisors maintain an employee performance/counseling file for each person under their supervision. This file might contain oral reprimands during the current evaluation period, letters of job related counseling sessions, copies of correspondence between the employee and supervisor, complementary correspondence, and other similar information regarding the performance of the employee. It is suggested this material be kept in a secured location by the immediate supervisor. This information should be purged after one year and after being noted on the employee's performance evaluation. [Calea 26.1.8]

Comment: Language added to reflect long standing practices within the department as well as CALEA standards.

Nothing in this policy shall prohibit the Chief of Police from exercising all authority granted under Civil Service Commission Rules and the Arkansas Code.

A. Compliance With Department Directives

Supervisors are expected to set a proper example to their subordinates in the matter of due respect and regard for the policies, procedures, and rules in all matters pertaining to proper discipline.

1. The primary function of a supervisor is to maintain the day-to-day activities of police operations. Compliance with department directives is an integral part of those operations. Supervisors are authorized to take action when department directives are not being followed. [Calea 26.1.5]
(a) A supervisor may elect to counsel an officer whose performance has been found to be deficient.
(b) A supervisor may refer an officer to the training division to correct deficient performance.
(c) A supervisor may document deficient performance and refer it to the Chief of Police in the form of an official complaint.
(d) In cases of a major infraction of policy or department directive, a supervisor may relieve an officer of patrol duties, with pay, and refer the matter to the Chief of Police.

Comment: Language added to comply with CALEA standards.

2. In case of alleged unjust treatment in violation of these policies, procedures, and rules, any officer may prefer charges against a superior to the proper authorities. When any member suspects a violation of these policies, procedures, and rules has occurred, they are to notify the Chief of Police for investigation, and may request results of the findings. Reporting a suspected violation confidentially is not a violation of the policies, procedures, and rules.

3. The following acts, infractions, or violations of the policies, procedures, and rules shall be deemed sufficient cause for separation from the department:

(a) Willful disobedience of lawful orders.

(b) Disrespect or insolence toward a superior officer.

(c) Being under the influence of intoxicants or drugs while on duty.

(d) Absence without leave.
Absence without leave is defined as any time a department member is scheduled for work and fails to report for duty without first notifying a supervisor prior to the start of the scheduled shift.

(e) Incompetence.

(f) Driving any machine or apparatus of the department carelessly or maliciously, in such a manner as to collide with, cause personal injury, damage a vehicle or other property, or any other wanton or malicious conduct, which causes injury or damage to a citizen or property.

(g) Neglect or refusal to pay just debts.

(h) Agitating or creating dissension in the department or attempting in any manner to cause ill feeling against any member of the department including civilian personnel working within our facility.

(i) Making any false or unwarranted report, either publicly or otherwise, about a member of this department.

(j) Dishonesty at any time when representing this department.

(k) Lack of Candor under direct questioning, either by any department supervisor or any investigator of the Office of Professional Standards.

4. It shall be the policy of the Fayetteville Police Department that all personnel maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Personnel shall perform their duties in a manner, which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by:

(a) A lack of knowledge of the application of laws and ordinances required to be enforced.

(b) An unwillingness or inability to perform assigned tasks.

(c) The failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.

(e) Absence without leave.

(d) Written record of repeated infractions of policies, procedures, rules, directives, or general orders of the department.

B. Unbecoming Conduct

Officers shall be held responsible at all times for conduct unbecoming an officer of the department, which tends to lower the law enforcement service in the estimation of the public. Officers

should be governed by ordinary rules of good behavior observed by law abiding and self-respecting citizens.

1. Any idle, indiscreet, disrespectful or discriminatory remark(s) or rudeness to citizens or any greeting(s), conversation(s), or remark(s) tending to show undue familiarity with members of the opposite sex while on duty shall subject a member to disciplinary action. (See Harassment and Discrimination Policy 26.1.2)

2. Officers are cautioned that the use of obscene, immoral, profane or disrespectful language, agitating and tending to create dissension in the department or attempts to cause undue or unfavorable reflection(s) upon any member of the department, will not be tolerated. Officers shall not engage in altercations between themselves under any circumstances.

3. All officers when reporting for duty shall be completely attired in the regulation uniform as prescribed by the Chief of Police. (Refer to 41.1.1 for Grooming Requirements) Failure to do so may subject the member to reprimand or suspension.

C. Use of Alcohol & Drugs

1. No employee of the police department shall consume alcoholic beverages while on duty. No officer of the department shall have or allow anyone else to have at any time, wine, beer, liquor or any other intoxicating drinks in or around the police station, except as directly related to a case or as evidence item(s). Officers shall not at any time while on duty be under the influence of any wine, beer, liquor, or other intoxicants of any kind, or under sickness caused or produced by the use of such intoxicants. Any officer absenting themselves from scheduled duty because of intoxicating drink, or reporting to duty under its influence, or in any unfit condition due to intoxicants or drugs will be subject to reprimand, suspension or discharge.

2. When deemed operationally necessary, officers in undercover assignments may consume alcoholic beverages and/or simulate the use of drugs. In doing so, officers shall submit a memo to their supervisor documenting the consumption of alcohol or simulation of the use of drugs.

Comment: Language added.

D. Abuse of Authority

Comment: This section is a combination of two sections from the previous policy as a means to streamline the document.

1. No officer (except when assigned desk duties inside the police facility) shall receive or collect any fine or fines for parking tickets, other traffic violations, or any other offenses whatsoever. Members shall courteously advise citizens that all fines are payable at the Fayetteville Police Department.

2. No officer shall directly or indirectly, except by permission of the Chief of Police, sell tickets, solicit any money, circulate any petitions, subscriptions, or allow the use of the department's name for any fair, exhibition, benefit, or similar project. In deciding whether to grant such permission, the Chief of Police shall not discriminate against any officer of the department. Such permission may be granted if the activity will not adversely affect the administration or management of the department, or decrease the trust or confidence of the public.

3. No officer shall take, solicit, retain, receive, or extort any fee, property, reward, gift, compensation, or thing of value or free service in any form from any person, firm, or corporation for any services rendered in the conduct or performance of the duties as a police officer.

4. It shall be the policy of the Fayetteville Police Department that its officers shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, towing firm, bail bondsman, mortician, etc.).

F. Use of Force

1. Refer to Chapter 1.3.1.

G. Proper Care & Maintenance of Equipment

1. Officers positively shall not loan any department equipment or tools, except on permission of the Chief of Police or other supervisor.

2. Officers are required to care for equipment in their possession. Any departmental equipment damaged due to either carelessness or an intentional act on the part of the employee may result in disciplinary action.

H. Employee Awards/Commendations [Calea 26.1.2]

Comment: Employee Awards/Commendations section was not in the old policy. It has been completely added anew.

1. It shall be the policy of this department to recognize heroic actions, meritorious service and significant achievements under the provisions of this policy. Facilitation of awards will be made through an Awards Committee. The Awards Committee will be comprised of departmental Captains, as permanent members, and departmental employees as appointed by the Chief of Police. Members of the Awards Committee will serve a period of two years. Nominations to the Awards Committee will be received by way of the departmental award application form. The Awards Committee will review all applications and make recommendations to the Chief of Police

who has final authority on awards. Awards will be presented at a time designated by the Chief of Police.

2. Classification of Awards

A. Chief's Award of Valor: Nominated by the Chief of Police, awarded for an act of extraordinary bravery or heroism by an employee who has demonstrated in great degree the characteristics of selflessness, personal courage and devotion to duty.
B. Exceptional Duty Award: Nominated by departmental supervisors, awarded for exceptional performance, which, in the opinion of the supervisor, is deserving of recognition.
C. Life Saving Award: Nominated by any employee of the department, awarded for a successful effort in saving a human life which involved exceptional courage or performance.
D. Unit Meritorious Performance Award: Nominated by any employee, awarded to any individual or unit (sworn or civilian) who has exhibited exceptional professional skill and conduct during a coordinated action.
E. Fayetteville Police Department Commendation: Nominated by any employee, awarded to any employee for an outstanding act or achievement, which brings great credit to the department and involves performance above and beyond that required by the individual's basic assignment.
F. Community Service Award: Nominated by any employee, awarded to any employee for involvement both on and off duty in youth activities, work with non-profit organizations, working with the police department on special projects or other activities for the public good.
G. Outstanding Citizen Award: Nominated by any employee, awarded to a citizen/member of the community who helps the department in apprehension of criminals or any other significant manner.
H. Police Blue Star Award: Nominated by the Awards Committee, awarded to any sworn employee who has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those incidents resulting from attack by an assailant, personal combat or the performance of an act of valor.
I. Police Blue Shield Award: Nominated by the Awards Committee, awarded to any sworn employee who, as a result of accidental cause, has been seriously, critically or fatally injured while in the performance of police duty. This award should be limited to those cases resulting from an accident.

J. Letters of Commendation: A letter of commendation may be written by the Chief of Police to any employee for job performance that might not meet the criteria for the above listed awards, but merits recognition nonetheless. Any person may recommend an employee of this department receive a letter of commendation by submitting a memorandum to the Chief of Police. A letter of commendation may be given:

1) To commend an employee for completing a job task in an exemplary manner.
2) To commend an employee for submitting a recommendation which directly contributes to increased department productivity or efficiency.
3) For any other reason deemed appropriate by the Chief of Police.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 26.1.2
Subject **HARASSMENT AND DISCRIMINATION IN THE WORKPLACE**		
Reference See 26.1.1	Special Instructions	
Distribution All Personnel	Reevaluation Date 1 Year	No.Pages -4-

I. PURPOSE

The purpose of this policy is to maintain a healthy work environment in which all individuals are treated with respect and dignity and to provide procedures for reporting, investigating and resolving complaints of harassment and discrimination. Federal law provides for protection of classes of persons based on race, color, sex, religion, age, disability and national origin. [Calea 26.1.3]

II. DISCUSSION

It is the policy of this department that all employees have the right to work in an environment free of harassment or discrimination. This department will not tolerate, condone or allow harassment or discrimination by employees, whether sworn, civilian, or other non-employees who conduct business with this agency. This department considers harassment and discrimination of others a form of serious employee misconduct. Therefore, this department shall take direct and immediate action to remedy all reported instances of harassment and discrimination.

Comment: Review/revision of policy revealed the specific mention of prohibiting "discrimination" was not made. This draft includes discrimination, as well as harassment, in the work place as being prohibited.

III. POLICY

A. Prohibited Activity

1. No employee will be given or denied any assignment based only upon age, sex, race, religion, politics, or physical handicap, unless such action would create a hazardous condition for the individual or others.

Comment: Language added upon advice from HR Division.

2. No employee shall harass another employee.

3. Employees shall not make offensive or derogatory comments to any person, either directly or indirectly, based on race, color, sex, religion age, disability, or national origin. Such harassment is a prohibited form of discrimination under state and federal employment law and is misconduct subject to disciplinary action by the department.

4. Sexual harassment is prohibited. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Comment: Language added upon advice from HR Division.

a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

b. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee;

c. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

5. Individuals covered under this policy include department members defined as employees.

B. Management Responsibilities

1. Each supervisor shall be responsible for preventing acts of harassment and discrimination. This responsibility includes:

a. Monitoring the work environment on a daily basis for signs that harassment or discrimination may be occurring;

b. Counseling all employees on the types of behavior prohibited, and the department's procedures for reporting and resolving complaints of harassment and discrimination;

c. Stopping any observed acts that may be considered harassment or discrimination, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision; and

d. Taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment or discrimination, pending investigation:

- If a situation requires separation of the parties, care should be taken to avoid actions that appear to punish the complainant.

- Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should be temporary pending the outcome of the investigation.

e. Failure to carry out these responsibilities will be considered in any evaluation or promotional decision and may be grounds for discipline.

2. Each supervisor has the responsibility to assist any employee of this agency who comes to that supervisor with a complaint of harassment or discrimination in documenting and filing a complaint with the Chief of Police.

3. Each employee is responsible for assisting in the prevention of harassment through refraining from participation in, or encouragement of, actions that could be perceived as harassment or discrimination.

C. Complaint Procedures

1. Any employee encountering harassment or discrimination is encouraged to inform the person that his or her actions are unwelcome and offensive. The employee is encouraged to document all incidents of this nature in order to provide the fullest basis for investigation.

2. Any employee who believes that he or she is being harassed or discriminated against shall report the incident(s) as soon as possible to an immediate supervisor so that steps may be taken to protect the employee, and so that appropriate investigative and disciplinary measures may be initiated. Where doing so is not practical, the employee may instead file a complaint with another supervisor, the Chief of Police or the Human Resources Division.

Comment: Language amended upon advice from HR Division.

a. The supervisor or other person to whom a complaint is given shall meet with the employee and document the incident(s) complained of, the person(s) performing or participating in the alleged act, any witnesses to the incident(s) and the date(s) on which it occurred.

b. The department employee taking the complaint shall promptly submit a confidential memorandum documenting the complaint to the Chief of Police. The Chief of Police will assign the complaint for investigation.

3. The Office of Professional Standards shall be responsible for investigating any complaint alleging harassment or discrimination.

4. There shall be no retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint.

5. The complaining party's confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.

6. This policy does not preclude any employee from filing a complaint or grievance with an outside agency.

D. Retaliation

1. Retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint, is illegal and is prohibited by this agency and by federal statutes.

2. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for harassment and discrimination complaints.

3. Monitoring to ensure that retaliation does not occur is the responsibility of the Chief of Police or any supervisor within the department.

4. Any employee experiencing retaliation for having brought forth a complaint should report it immediately to his/her supervisor, supervisor's supervisor, the Chief of Police or the Human Resources Division.

Comment: Language added upon advice from HR Divisionl.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

	Effective Date	Number 46.2.1
Subject **EMERGENCY RESPONSE TEAM**		
Reference	Special Instructions	
Distribution All Personnel	Reevaluation Date 1 Year	No.Pages -7-

I. PURPOSE

To establish policies relating to the organization, administration and operation of the Emergency Response Team (E.R.T.). The primary responsibility of the E.R.T. will be the resolution of difficult police situations through the use of special skills and tactics.

II. POLICY

A. ORGANIZATION AND ADMINISTRATION

The number of E.R.T. members will be decided by the Chief of Police. The Chief of Police shall appoint the following:

1. A unit commander (Sergeant or Lieutenant) and;
2. A team leader(s);
3. All team members.

Comment: Plurality added for future use.

The remaining team assignments will be made within the team with the approval of the Chief of Police. The E.R.T. will be under the supervision of a Captain as designated by the Chief of Police.

The Fayetteville Police Department will supply its Emergency Response Team members with the equipment deemed necessary to complete the training and assignments of the team. [Calea 46.2.3]

Comment: Language added to comply with CALEA standard.

B. PERSONNEL SELECTION

Comment: Personnel Selection Needed to comply with CALEA Standards

Recognizing the nature of Emergency Response Team operations requires disciplined, physically fit, experienced, calm, capable and well trained professionals, team selection will be conducted through a fair, non-discriminatory process that measures the factors deemed to be important to the performance of the team. [Calea 46.2.2]

When opening(s) on the Emergency Response Team occur, tests/tryouts will be conducted to determine, from among the eligible applicants, who will be appointed to the team.

1. Applicant requirements:

An applicant for the Emergency Response Team must meet the following criteria:

a. Be a full time, sworn member of the department
b. Have at least 12 months of uniform field experience
c. Be recommended for the Emergency Response Team by a supervisor
d. Past disciplinary actions will be taken into consideration.

2. Applicant Testing:

The selection process will consist of the following:

a. Physical Conditioning Test: Each applicant must successfully pass a conditioning test consisting of the Fayetteville Police Department physical fitness standards for the Emergency Response Team. This standard is set at 20% above required departmental standards plus seven (7) pull-ups.
b. Firearms Test: Each applicant must successfully pass the Arkansas Law Enforcement Standards and Training (ALETA) Standard Qualification Course of Fire for one target. Marksmanship standards for handgun qualification set for the team is 90%. In addition, the applicants will be put through a minimum of one (1) combat-style shoot course administered by a certified firearms instructor.
c. Written recommendation: Each applicant must receive a written letter of recommendation from his supervisor. This letter will be forwarded to the Chief of Police.
d. Oral Interview: Each applicant will be asked to participate in an oral interview in which a series of pre-developed questions will be asked. The Chief of Police or his designee will assign the interview panel.
e. The Emergency Response Team utilizes alternate team members to cover shortages or loss due to attrition. Alternate team members undergo the same applicant and testing process as listed

above. The Chief of Police chooses alternates. Alternates train with the ERT during scheduled training periods but are not subject to call out unless specifically needed. In addition, alternate team members should be given specialized training outside regularly scheduled ERT training.

Once testing is completed, the interview panel will compile the results with a recommendation to the Chief of Police. Applicants will be appointed to the E.R.T. at the discretion of the Chief of Police.

3. Removal from Team:

Once selected for an opening on the E.R.T., an applicant is placed on probationary status for a period of one (1) year.

All E.R.T. members must maintain their level of individual and team skills. Failure to maintain skill levels and/or stay physically fit is grounds for removal from the team.

The Chief of Police, upon the consensus of the team leadership, may remove any member in the best interests of the team.

a. Failure to maintain minimum physical fitness and/or skill levels will be dealt with by immediate remedial instruction and re-testing. Failure to reach minimum levels during re-testing will result in the team member being placed in a non-deployable status for a period of thirty (30) days, during which the team member will be required to bring skill levels back up to minimum. Failure to do so will result in removal from the team.
b. If skill level or physical fitness failure is due to the existence of a valid injury, the team member will begin a rehabilitative process and excused from ERT duties. Once released from medical care, the team member shall pass the skill level or physical fitness test.

A team member may request to be voluntarily withdrawn from assignment to the E.R.T. at any time. The team member must submit a letter of resignation to the Chief of Police, who may grant or deny the request after a review of the circumstances.

C. DUTIES AND RESPONSIBILITIES

1. TEAM COMMANDER

The team commander is directly responsible for the following areas:

Comment: Some team commander duties were deleted as they related to personnel selection and physical fitness requirements which are covered elsewhere.

a. Direct supervision of the team members;

b. Training;

c. Maintaining an inventory of all team equipment, which includes assignment to individual team members or storage location [Calea 46.2.3];

d. Maintaining training and call-out files for the team [Calea 33.6.2];

e. Reporting all training and equipment needs to the designated Captain supervising the Emergency Response Team.

2. TEAM LEADER

In the absence of the Team Commander, the team leader assumes responsibility for the Team Commander's duties.

3. TEAM MEMBERS

Team members are required to comply with the following:

a. Maintain minimum physical fitness conditioning requirements as established by the Chief of Police;

b. Maintain familiarity with all equipment used by the E.R.T.;

c. Maintain minimum marksmanship standards set for the team.

d. Must be available for call-outs by having their paging device with them at all times;
(* **Exception** - When members are sick or on scheduled leave)

e. The timely response and completion of all tasks, as well as, demonstration of high standards of performance;

f. Attend all scheduled training operations unless excused by the Team Commander or Team Leader prior to the assigned training date.

g. Maintain all assigned equipment in good condition;

h. Wear approved and appropriate E.R.T. attire on all call-outs and training days;

i. Use departmentally issued or authorized E.R.T. equipment;

j. Familiarization with basic first aid. (A first aid kit will be maintained and kept with the team during call-outs and training exercises).

D. TRAINING

Comment: Training section was revised/amended to reflect long standing practices and to comply with CALEA standards.

1. The Emergency Response Team shall train at least one day per month as set forth by the team commander and team leader.

2. The counter sniper/observer team shall have a training day of at least one day per month aside from the team-training day.

3. The team leadership will delineate the individual, squad and team level skills required for the team to successfully conduct operations. Those skills will create the basis for specific training exercises of the E.R.T. Training exercises will be created by the team leadership. Joint training exercises between the Emergency Operations Team and the Crisis Negotiation Team should be conducted periodically. Any training exercise shall be documented to include the type of training, date, attendance and scores, if applicable. [Calea 33.6.2]

4. Due to the required physical fitness standards for E.R.T. members, they are allotted two (2) hours per week while on duty for physical fitness training. It is the responsibility of the team members to schedule their physical fitness training time with their immediate supervisor. Fitness training hours must be used during the current work period and cannot be carried over to the next work period. The fitness training hours must be used during the scheduled workday. No overtime or compensatory time can be accrued as a result of the use of the fitness training hours.

E. CHEMICAL AGENTS/DISTRACTION DEVICES

Chemical agents and distraction devices require proper training for effective use and shall be used only upon authorization of the team leader or team commander by personnel trained in their use.

F. CALL-OUT NOTIFICATION/DEPLOYMENT

1. In the event of an incident in which the Emergency Response Team might be activated, initial responding patrol officers have an integral role of support. [Calea 46.2.1]
   a. Patrol officers should contain/secure the scene of an event to the extent possible.
   b. Officers should locate and interview witnesses if possible.

c. Officers should attempt to secure information as to the lay out of the scene of the incident.
d. Officers should relay any intelligence information regarding the incident to be forwarded to the E.R.T. team leadership.

Comment: Language added to comply with CALEA standards.

2. Any Fayetteville Police Department supervisor may request assistance from the E.R.T. However, a Fayetteville Police Department Captain or personnel of higher rank must authorize all Emergency Response Team call-outs.

Comment: Language was streamlined on authorization.

3. Following authorization for a call-out, the supervisor requesting E.R.T. assistance shall notify the Team Commander or Team Leader of the situation. It is the responsibility of the Team Commander/Leader to see that all team members are contacted and advised of the call-out.

4. In the event of situation requiring immediate activation of the E.R.T., team members can be activated by using the "all-page" function of the pagers.

5. Emergency Response Team members are not to be used in their capacity as tactical officers while on normal patrol duty except under the direct supervision of the team commander or team leader.

6. In the event a team member has consumed any alcoholic beverage or taken prescribed medication it shall be the responsibility of that member to notify either the Team Commander or the Team Leader of their incapacitation. Team members shall not be under the influence of intoxicants or drugs while on duty.

Comment: Language revised to conform with other policy references.

G. PRE-RAID BRIEFING

1. Team members will assemble in a pre-determined location for a briefing of the assignment in question. A member of Central Dispatch and a patrol shift supervisor will be included in the briefing. [Calea 46.2.1]

2. The Team Leader will be responsible for seeing that the following topics are covered during the briefing process:

a. A pre-raid survey (drive-by) of the location in question will be made if time permits and the drive-by will not compromise the mission.

b. The Team Leader will make team assignments and determine what equipment is necessary for the situation.

c. A team member(s) will be assigned the task of completing a pre-raid form, a post-raid diagram of the target location and a post-raid report regarding the E.R.T.'s activities.

d. Other emergency operation teams, i.e. Emergency Medical Services (E.M.S.) or Crisis Negotiation Team (C.N.T.), will be put on stand-by in a location near the target location immediately prior to the mission, when possible. [Calea 46.2.1]

Comment: Language modified to add other special units and comply with CALEA standard.

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Jesse Fulcher	Planning	Development Services
Submitted By	**Division**	**Department**

Action Required:

ADM 09-3435: (1121 N. Mission Boulevard ROW Variance) Submitted by Colby Salazar for property located at 1121 N. Mission Boulevard, requesting a variance of the Master Street Plan setback in the manner indicated to allow the existing building footprint to remain in its current location and be improved.

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

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Department Director — Date

City Attorney — Date 9-18-09

Finance and Internal Services Director — Date 9-18-2009

Chief of Staff — Date 9-19-09

Mayor — Date 9/21/09

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

Received in City Clerk's Office — ENTERED 9-17-09 KG

Received in Mayor's Office — ENTERED 9/18/09 PH

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Jeremy C. Pate, Development Services Director

Date: September 17, 2009

Subject: Right-of-way setback variance at 1121 N. Mission Boulevard (ADM 09-3435)

RECOMMENDATION

Planning Staff recommends approval of a resolution allowing a variance of Unified Development Code Chapter 166.18 Master Street Plan setbacks for 812 W. Cleveland Street in the manner indicated to allow the existing building footprint that encroaches into the Master Street Plan right-of-way to remain and be improved.

BACKGROUND

The subject property is located at the northwest corner of Mission Boulevard and North Street. According to County records, the subject property was developed with a single-family home in approximately 1921. The southeast corner of the existing rock home is located outside of the Master Street Plan right-of-way; however, the front porch encroaches approximately 6' into the right-of-way.

The Board of Adjustment on Monday, September 14, 2009 voted to approve a proposal to bring the non-conforming building into compliance. In addition to Board of Adjustment approval, a variance of the Master Street Plan setback ordinance is required to be approved by the Fayetteville City Council in order to permit the nonconforming structure that is located within the Mission Boulevard Master Street Plan right-of-way to be reconstructed or structurally altered to an extent exceeding 25% of the square footage of the structure as it existed on the date it became nonconforming. Chapter 166.18 of the Unified Development Code does not permit the establishment of new structures or improvements within the Master Street Plan right-of-way. However, strict compliance with Ch. 166.18 would cause undue hardship to the applicant, in that the structure would have to removed or substantially altered to improve it. This situation is unique to this property, and the variation will not have the effect of nullifying the intent and purpose of the development regulations, in accordance with Ch. 156.03 Development variances.

BUDGET IMPACT

None.

RESOLUTION NO.

A RESOLUTION APPROVING A VARIANCE OF §166.18 MASTER STREET PLAN SETBACKS OF THE UNIFIED DEVELOPMENT CODE TO ALLOW THE EXISTING STRUCTURE LOCATED AT 1121 N. MISSION BOULEVARD TO REMAIN WITHIN THE MASTER STREET PLAN RIGHT-OF-WAY SETBACK AND TO BE IMPROVED GREATER THAN THE 10% REPLACEMENT COST ALLOWED BY CODE.

WHEREAS, Section 166.18 of the Unified Development Code does not permit improvements to buildings that lie within the Master Street Plan right-of-way setback; and

WHEREAS, a Master Street Plan right-of-way setback of 48.5 feet from centerline is required for this portion of North Mission Boulevard, a Principal Arterial; and

WHEREAS, the established setback line results in a building that partially encroaches into the setback and the nonconforming structure therefore may not be improved; and

WHEREAS, the existing structure on the subject property would have to be removed or substantially altered for redevelopment or improvements if required to comply with the current Master Street Plan; and

WHEREAS, the property owner wishes to improve the dilapidated structure and faces a unique and difficult hardship imposed by the Master Street Plan right-of-way setback and the limits on repairs on a nonconforming structure; and

WHEREAS, this section of N. Mission Boulevard is not currently anticipated to be needed for expansion; and

WHEREAS, the City Council recognizes the unique and undue hardship on the property owner and finds that a variance from these requirements will not have the effect of nullifying the intent and purpose of the development regulations;

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, in accordance with §156.03 Development variances, hereby approves a variance of Section 164.12(H) of the Unified

Development Code, permitting the structure to be improved as needed so long as the structure does not extend further into the right-of-way than it exists today.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in accordance with §156.03 Development variances, hereby approves a variance of Section 166.18 Master Street Plan Setbacks, permitting the existing structure to remain in its current location as depicted on Exhibit "A", provided that said approval in no way prohibits the City from obtaining right-of-way pursuant to the Master Street Plan in the future for widening of adjacent streets.

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

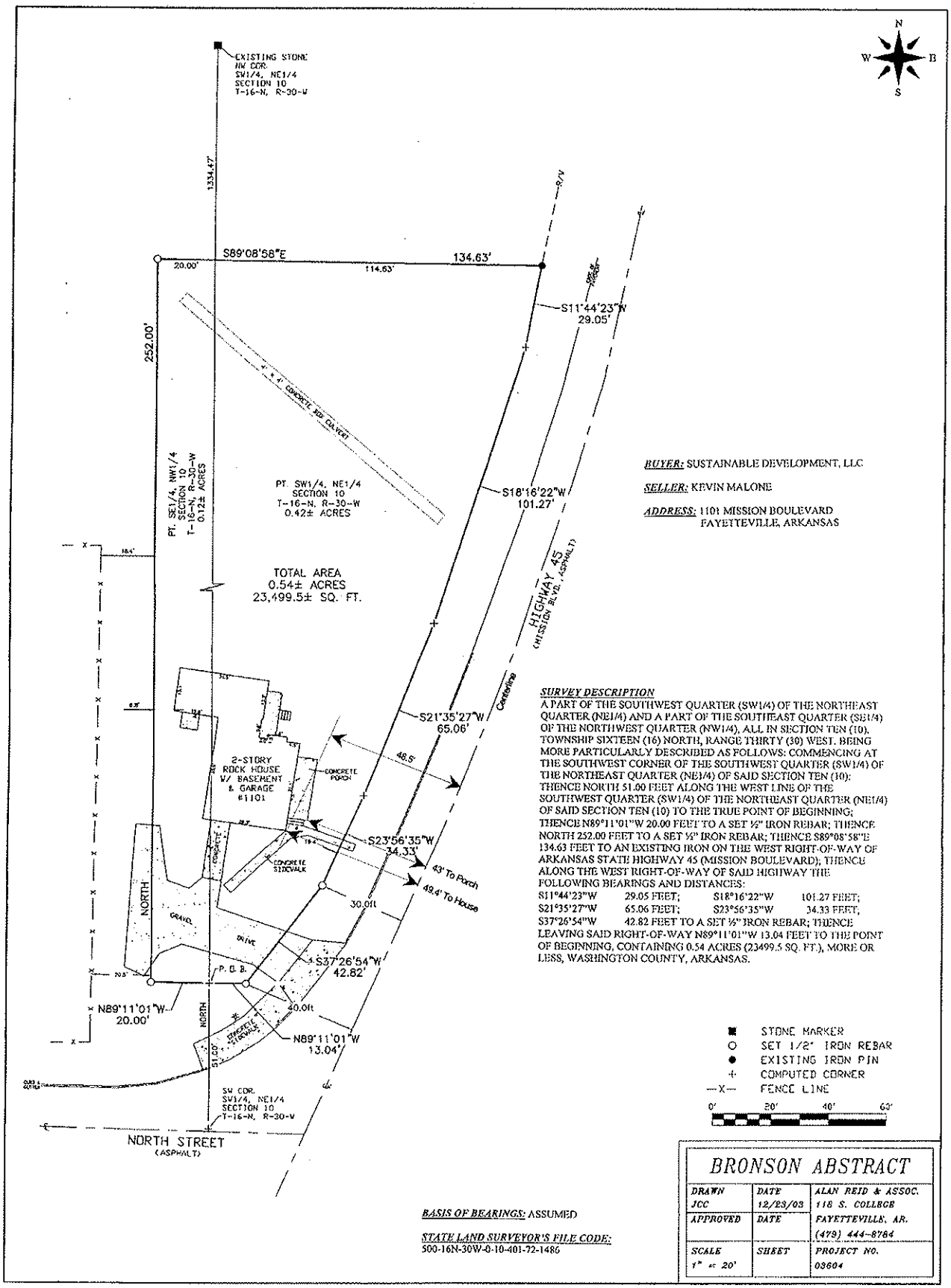
APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

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

EXHIBIT "A"



BUYER: SUSTAINABLE DEVELOPMENT, LLC

SELLER: KEVIN MALONE

ADDRESS: 1101 MISSION BOULEVARD
FAYETTEVILLE, ARKANSAS

SURVEY DESCRIPTION

A PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) AND A PART OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4), ALL IN SECTION TEN (10), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION TEN (10); THENCE NORTH 51.00 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION TEN (10) TO THE TRUE POINT OF BEGINNING; THENCE N89°11'01"W 20.00 FEET TO A SET ½" IRON REBAR; THENCE NORTH 252.00 FEET TO A SET ½" IRON REBAR; THENCE S89°08'58"E 134.63 FEET TO AN EXISTING IRON ON THE WEST RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY 45 (MISSION BOULEVARD); THENCE ALONG THE WEST RIGHT-OF-WAY OF SAID HIGHWAY THE FOLLOWING BEARINGS AND DISTANCES:

S11°44'23"W	29.05 FEET;	S18°16'22"W	101.27 FEET;
S21°35'27"W	65.06 FEET;	S23°56'35"W	34.33 FEET,
S37°26'54"W	42.82 FEET TO A SET ½" IRON REBAR; THENCE		

LEAVING SAID RIGHT-OF-WAY N89°11'01"W 13.04 FEET TO THE POINT OF BEGINNING, CONTAINING 0.54 ACRES (23499.5 SQ. FT.), MORE OR LESS, WASHINGTON COUNTY, ARKANSAS.

BASIS OF BEARINGS: ASSUMED

STATE LAND SURVEYOR'S FILE CODE:
500-16N-30W-0-10-401-72-1486

BRONSON ABSTRACT		
DRAWN JCC	DATE 12/23/03	ALAN REID & ASSOC. 118 S. COLLEGE
APPROVED	DATE	FAYETTEVILLE, AR. (479) 444-8764
SCALE 1" = 20'	SHEET	PROJECT NO. 03604

ARA

BOA Meeting of September 14, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Board of Adjustment
FROM: Jesse Fulcher, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~September 9, 2009~~ *Updated September 17, 2009*

BOA 09-3422 (SALAZAR / 1121 N. MISSION BLVD.): Submitted by COLBY SALAZAR for property located at 1121 N. MISSION BLVD. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 0.54 acres. The request is for setback variances to bring an existing non-conforming structure into compliance. Planner: Jesse Fulcher

BACKGROUND:

Property Description: The subject property is located at the northwest corner of Mission Boulevard and North Street. According to County records, the subject property was developed with a single-family home in approximately 1921. The southeast corner of the existing rock home is located outside of the Master Street Plan right-of-way; however, the front porch encroaches into the right-of-way.

SURROUNDING LAND USE AND ZONING

Direction from Site	Land Use	Zoning
North	Single-Family Residential	RSF-4, Single-Family Res., 4 units/acre
South	Single-Family Residential	RSF-4, Single-Family Res., 4 units/acre
East	Single-Family Residential	RSF-4, Single-Family Res., 4 units/acre
West	Single-Family Residential	RSF-4, Single-Family Res., 4 units/acre

Proposal: The applicant is requesting a variance from the front setback requirement of 15' to bring the existing home into compliance with current setback requirements.

Variance Issue	Ordinance Requirement	Applicant's Request
Front Setback (Mission Blvd.)	15'	0' (a 15' variance)

RECOMMENDATION:

Staff recommends approval of the requested setback variance as listed herein and as shown on the attached drawing with the following conditions:

1. **A building permit shall not be granted for an expansion to the structure, or for improvements that exceed 25% of the current replacement cost of the structure**

unless and until the City Council approves a reduction of the Master Street Plan right-of-way for Mission Boulevard.

2. **Future alterations or additions to the existing structures shall meet required building setback regulations, unless otherwise approved by the Board of Adjustments.**

Additional Conditions/Comments:

BOARD OF ADJUSTMEMT ACTION:	**√ Approved**	**O Denied**
Date: September 14, 2009		

The "CONDITIONS OF APPROVAL" listed in this report are accepted in total without exception by the entity requesting approval of this variance.

Name: _____ **Date:** _____

CITY PLAN 2025 LAND USE DESIGNATION: Residential Neighborhood Area

FINDINGS:
City of Fayetteville Unified Development Code
Section 156.02 Zoning Regulations

Certain variances of the zoning regulations may be applied for as follows:

A. **General Regulations/Application**. A variance shall not be granted unless and until an application demonstrates:

1. **Special Conditions**. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.

Finding: **There are special conditions and circumstances that exist for this building. The existing structure was constructed in 1921, well prior to the adoption of the City's zoning ordinance and Master Street Plan. Consequently, the structure is located within the required building setback, necessitating a setback variance to bring the building into compliance.**

2. **Deprivation of Rights**. That literal interpretation of the provisions of the zoning regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning regulations.

Finding: **Literal interpretation of zoning regulations would greatly reduce the applicant's ability to improve or expand the existing structure on the property. The existing building could be retained on the property, but without a variance the applicant could only make ordinary repairs not exceeding 25% of the replacement value of the structure. As stated by the applicant, the existing structure requires significant repairs and reconstruction, which will easily exceed the 25% replacement cost. Thus, literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

3. **Resulting Actions**. That the special conditions and circumstances do not result from the actions of the applicant.

Finding: **Special conditions or circumstances are not the result of the actions of applicant. The location of the existing structure was determined when the property was developed in 1914, prior to the adoption of the City's zoning regulations and prior to Mission Boulevard being classified as a Principal Arterial requiring 48.5' of right-of-way from centerline.**

4. **No Special Privileges.** That granting the variance requested will not confer on the applicant any special privilege that is denied by Zoning, Chapters 160-165, to other lands, structures, or buildings in the same district.

Finding: **Granting the requested setback variance will not confer special privileges on the applicant. The applicant is requesting approval for improvements to a historic structure that was built prior to adoption of the zoning regulations.**

5. **Nonconforming Uses**. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

Finding: **No other nonconformities were considered as a basis of the findings stated in this staff report.**

Section 156.02 C. Consideration by the Board of Adjustment.

1. **Bulk and Area.**
Applications for variances of bulk and area requirements shall be considered by and may be approved by the Board of Adjustment.
2. **Public Hearing**. A public hearing shall be held.

Finding: **A public hearing is scheduled for Monday, September 14, 2009.**

3. **Findings.** The Board of Adjustment shall make the following findings:

a. **Minimum Variance.** That the reasons set forth in the application justify the

granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

Finding: **The requested setback variance is the minimum variance necessary to accommodate the existing structure on the subject property.**

b. **Harmony with General Purpose**. The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of Zoning, Chapters 160-165, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

Finding: **Granting the variance will be in harmony with the general purpose and intent of zoning regulations, and will not be injurious to the neighborhood. The house has existed in its current condition for almost 100 years, but is now boarded up, in poor condition and in need of significant repairs. Granting the variance will allow the historic structure to be retained on the property and for improvements to occur, benefiting the public welfare and the surrounding community.**

c. **Conditions and Safeguards**. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the zoning regulations.

Finding: **Staff has recommended conditions for this request which are stated on page one of this report.**

d. **No Variance Allowed.** Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under Zoning in the district involved, or any use expressly or by implication prohibited by the terms of the zoning regulations in said district.

Finding: **The use is permitted in the zoning district.**

8/17/2009

Chair of the Board of Adjustment
113 West Mountain St
Fayetteville, AR 72701

Chair of the Board of Adjustment:

The property of 1121 N Mission Blvd (formerly 1101) is currently a nonconforming residence as a portion of the east side of home falls within the current setback requirements. As a result I'm only permitted to improve 25% of the property's value before an adjustment variance is required. The purpose of this request is to allow me to completely finish out the existing dwelling on property.

This historic stone dwelling, built in 1921, has beautiful stone exterior walls however the inside is in need of a complete build out. The dwelling is currently uninhabitable. It has no flooring, walls, electrical or plumbing. This is a complete new construction build-out for the interior. The build-out will create no additional encroachments on the current setback requirements.

Below I have addressed the information requested on the adjustment variance application:

- Existing building size: 1490 sq/ft ; Proposed building size 2420 sq/ft
  The additional square footage will be created by finishing out the interior with two levels as opposed to the one level (as it currently stands). This finish out will produce the additional square footage without expanding the footprint of the dwelling.
- Home will have drive way which will provide up to 4 parking spaces
- Existing dwelling on property falls within the current building setback requirements. I am requesting building set back variance to allow to me to finish out the existing structure.

  A) This historic stone dwelling was built in 1921 and has been abandon for many years. Many roads were established creating setbacks after the dwelling was built. New developments with raw land are able to give consideration and adhere to existing setback requirements where as this dwelling was built prior to the establishment of current setback requirements.
  B) A portion of this historic stone dwelling is located in an easement (within the setback requirements) which would require the home to be torn down and rebuilt according to current setback requirements OR improve the home up to 25% of the current property value which would not be sufficient to finish out the structure ultimately leaving it uninhabitable as it currently stands.
  C) The historic stone dwelling was built in 1921. The infrastructure has changed over the years through Fayetteville's growth and expansion causing the dwelling to fall within an easement.

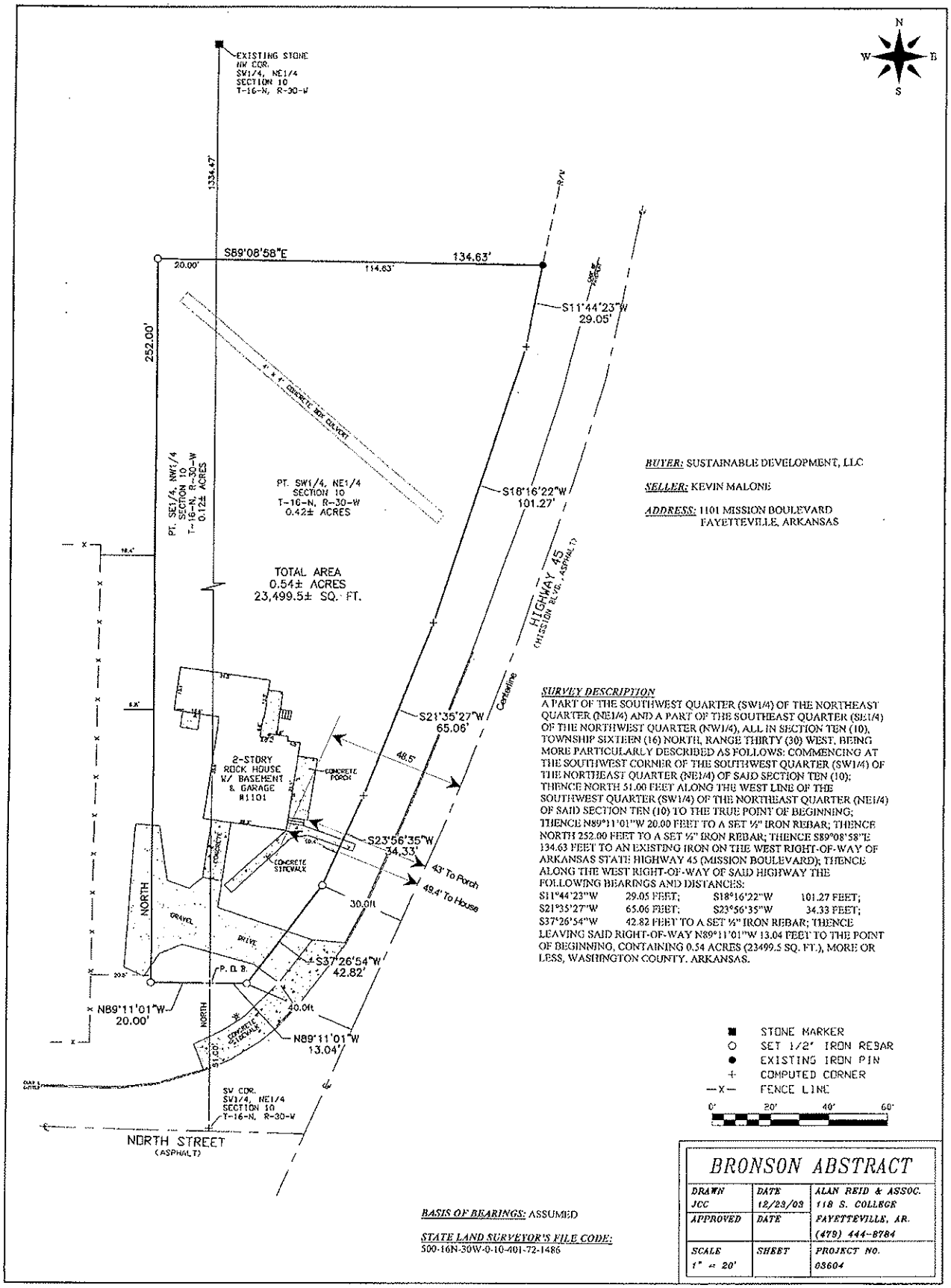
D) Granting this variance would allow me to complete this historic stone dwelling as would any other home owner be permitted to complete their home. This dwelling is in need of total interior restoration which would require more improvements than the current code allows.

I have included a warranty deed for the purpose of providing the complete legal description of the property. In addition you will find a copy of the survey and an enlarged plat of the property from that survey which is to scale.

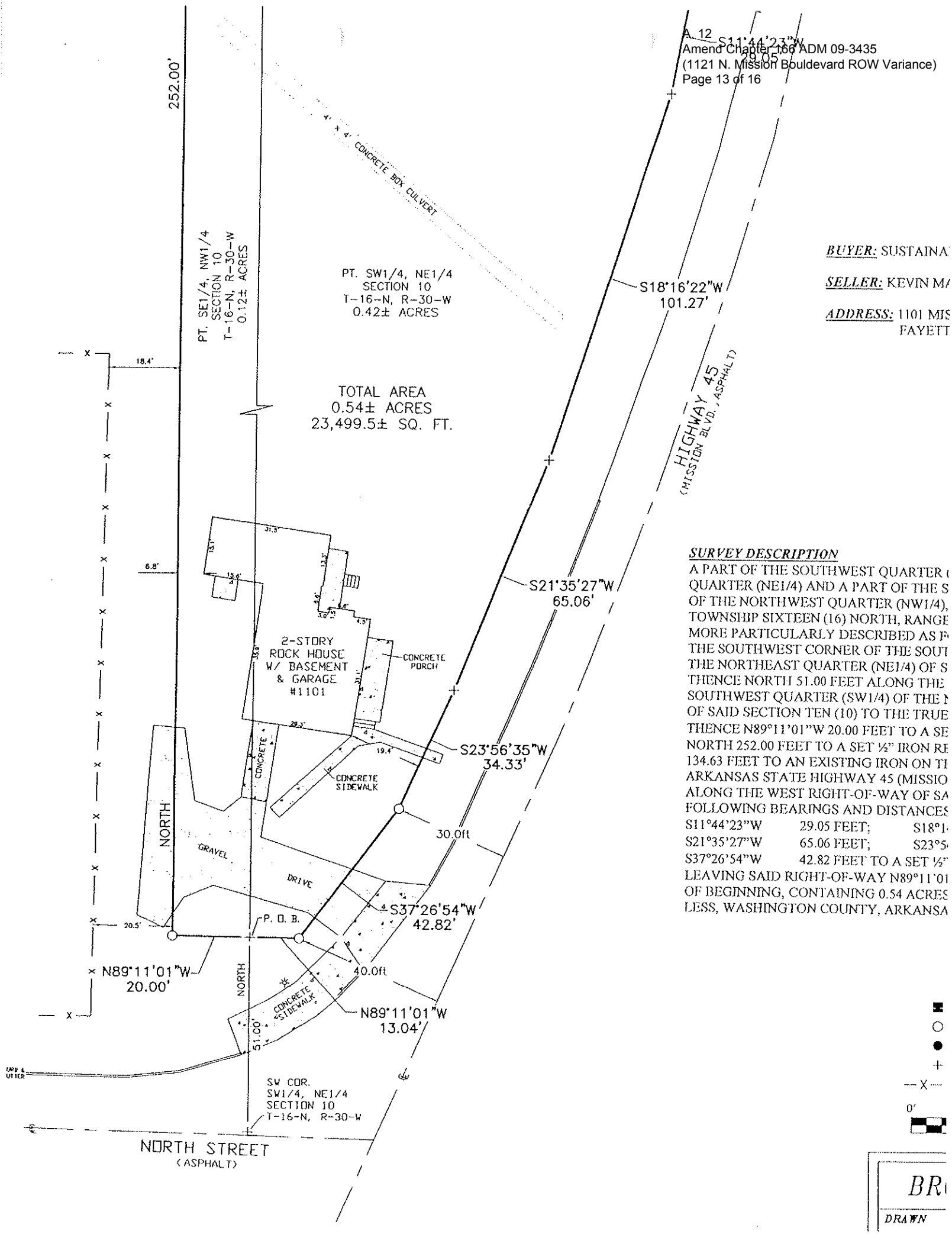
If you have questions regarding this information please contact me.

Sincerely,

Colby Salazar
2248 Hummingbird Ln
Fayetteville, AR 72703
479.871.6364
Colby.salazar@gmail.com


EXISTING STONE
NW COR.
SW1/4, NE1/4
SECTION 10
T-16-N, R-30-W
1334.47'
S89°08'58"E
20.00'
114.63'
134.63'
S11°44'23"W
29.05'
252.00'
PT. SE1/4, NW1/4
SECTION 10
T-16-N, R-30-W
0.12± ACRES
PT. SW1/4, NE1/4
SECTION 10
T-16-N, R-30-W
0.42± ACRES
S18°16'22"W
101.27'
TOTAL AREA
0.54± ACRES
23,499.5± SQ. FT.
HIGHWAY 45
(MISSION BLVD. - ASPHALT)
Centerline
S21°35'27"W
65.06'
48.5'
2-STORY
ROCK HOUSE
W/ BASEMENT
& GARAGE
#1101
CONCRETE PORCH
S23°56'35"W
34.33'
43' To Porch
49.4' To House
CONCRETE SIDEWALK
30.0ft
NORTH
GRAVEL
DRIVE
S37°26'54"W
42.82'
P. O. B.
N89°11'01"W
20.00'
40.0ft
N89°11'01"W
13.04'
SW COR.
SW1/4, NE1/4
SECTION 10
T-16-N, R-30-W
NORTH STREET
(ASPHALT)
N
S
E
W
STONE MARKER
SET 1/2" IRON REBAR
EXISTING IRON PIN
COMPUTED CORNER
FENCE LINE
0'
20'
40'
60'
BUYER: SUSTAINABLE DEVELOPMENT, LLC
SELLER: KEVIN MALONE
ADDRESS: 1101 MISSION BOULEVARD
FAYETTEVILLE, ARKANSAS
SURVEY DESCRIPTION
A PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) AND A PART OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4), ALL IN SECTION TEN (10), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION TEN (10); THENCE NORTH 51.00 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION TEN (10) TO THE TRUE POINT OF BEGINNING; THENCE N89°11'01"W 20.00 FEET TO A SET ½" IRON REBAR; THENCE NORTH 252.00 FEET TO A SET ½" IRON REBAR; THENCE S89°08'58"E 134.63 FEET TO AN EXISTING IRON ON THE WEST RIGHT-OF-WAY OF ARKANSAS STATE HIGHWAY 45 (MISSION BOULEVARD); THENCE ALONG THE WEST RIGHT-OF-WAY OF SAID HIGHWAY THE FOLLOWING BEARINGS AND DISTANCES:
S11°44'23"W 29.05 FEET; S18°16'22"W 101.27 FEET;
S21°35'27"W 65.06 FEET; S23°56'35"W 34.33 FEET;
S37°26'54"W 42.82 FEET TO A SET ½" IRON REBAR; THENCE LEAVING SAID RIGHT-OF-WAY N89°11'01"W 13.04 FEET TO THE POINT OF BEGINNING, CONTAINING 0.54 ACRES (23499.5 SQ. FT.), MORE OR LESS, WASHINGTON COUNTY, ARKANSAS.
BASIS OF BEARINGS: ASSUMED
STATE LAND SURVEYOR'S FILE CODE:
500-16N-30W-0-10-401-72-1486
BRONSON ABSTRACT
DRAWN JCC
DATE 12/23/03
ALAN REID & ASSOC.
118 S. COLLEGE
APPROVED
DATE
FAYETTEVILLE, AR.
(479) 444-8784
SCALE 1" = 20'
SHEET
PROJECT NO. 03604

ARA



BUYER: SUSTAINA

SELLER: KEVIN M/

ADDRESS: 1101 MIS
FAYETT

SURVEY DESCRIPTION

A PART OF THE SOUTHWEST QUARTER (
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OF THE NORTHWEST QUARTER (NW1/4),
TOWNSHIP SIXTEEN (16) NORTH, RANGE
MORE PARTICULARLY DESCRIBED AS F
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S21°35'27"W 65.06 FEET; S23°5
S37°26'54"W 42.82 FEET TO A SET ½"
LEAVING SAID RIGHT-OF-WAY N89°11'01
OF BEGINNING, CONTAINING 0.54 ACRES
LESS, WASHINGTON COUNTY, ARKANSA

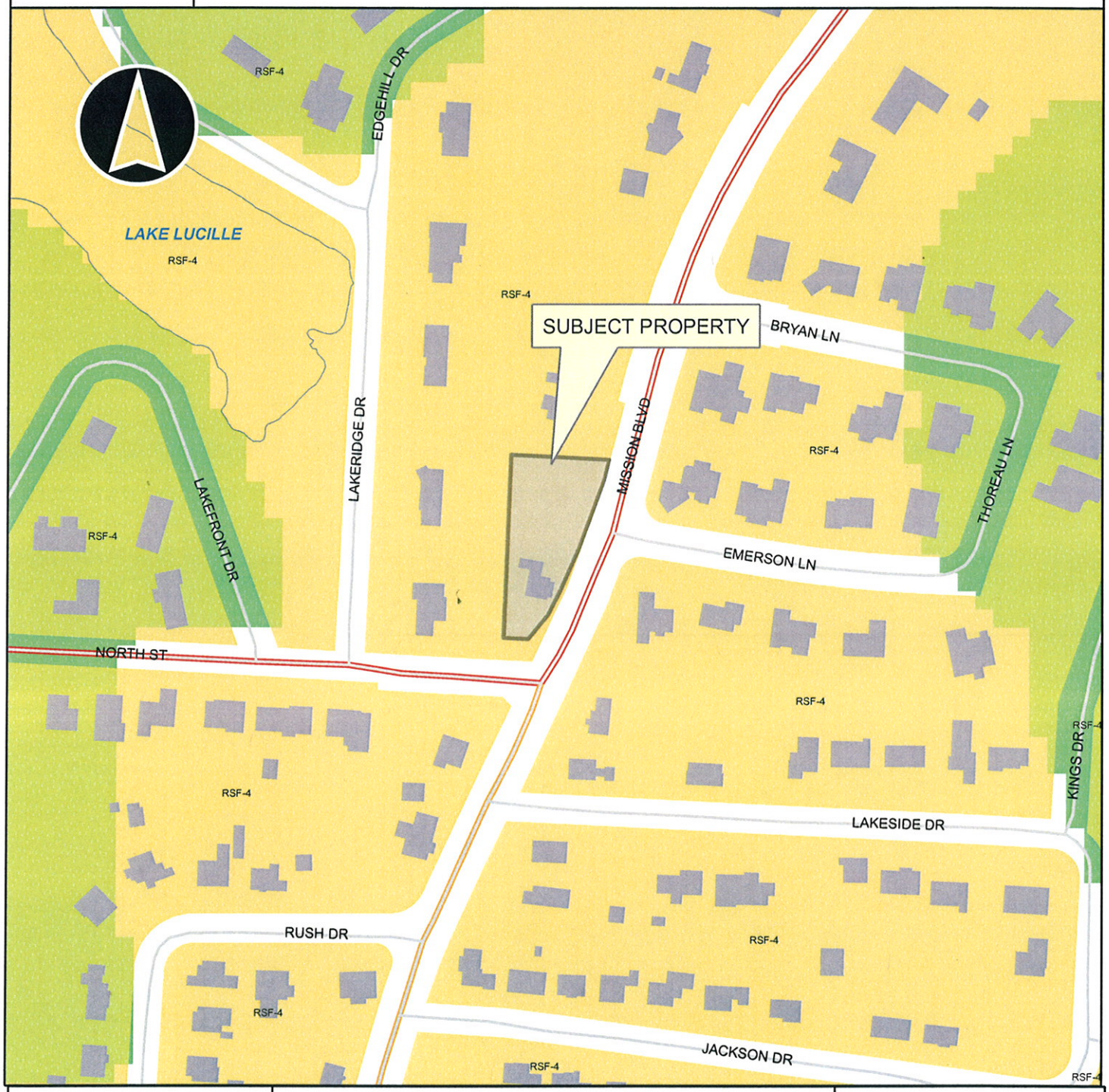
BR

DRAWN

BOA09-3422

Close Up View

SALAZAR/ 1121 MISSION



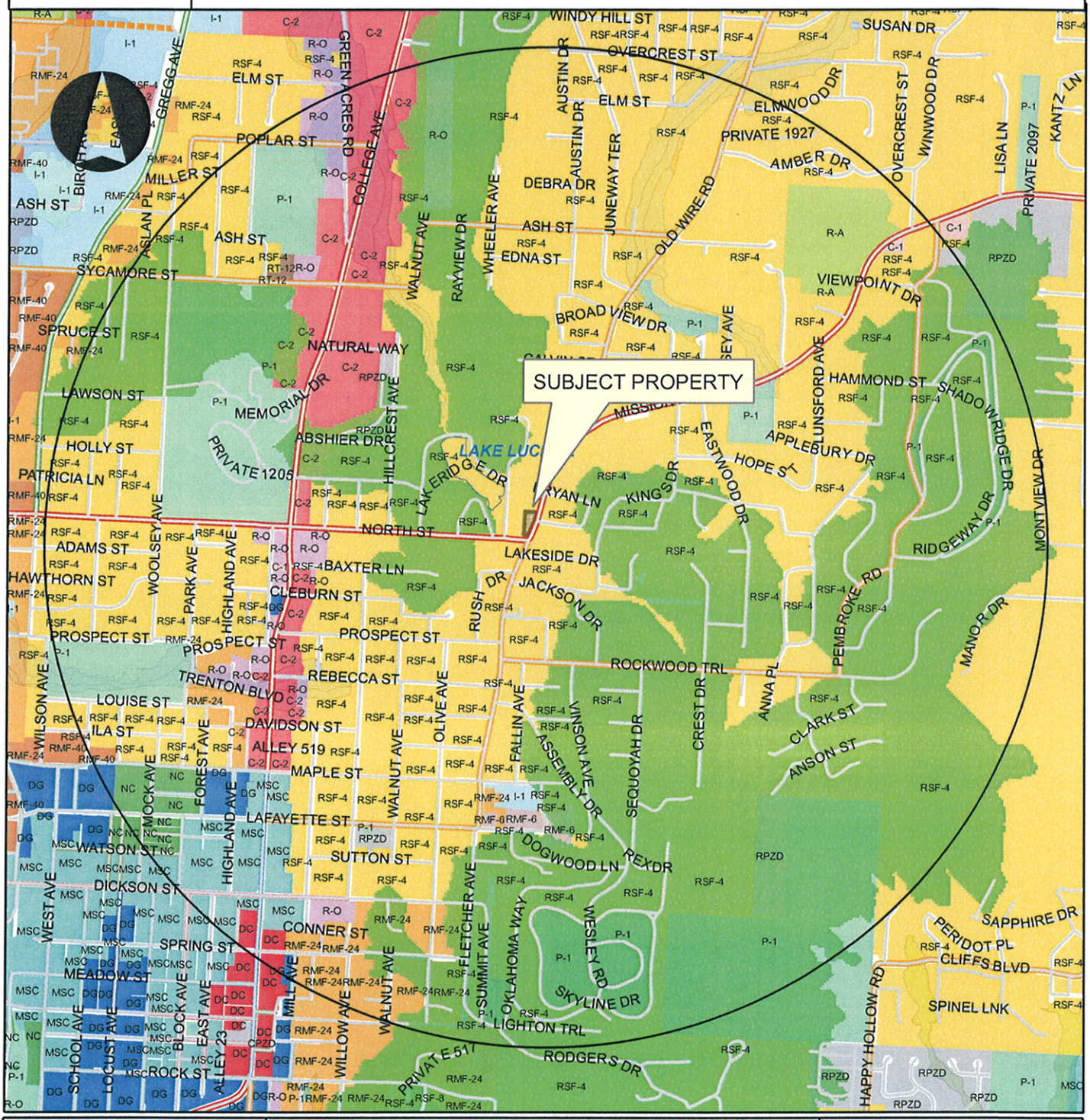
Overview

0 75 150 300 450 600 Feet

BOA09-3422

One Mile View

SALAZAR/ 1121 MISSION



Overview

Legend

Subject Property

BOA09-3422

Boundary

0 0.25 0.5 1 Miles

AGENDA REQUEST

FOR: COUNCIL MEETING OF SEPTEMBER 1, 2009

FROM:

Shirley Lucas, Council Member
Sarah Lewis, Council Member

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Prevent Injury Or Annoyance Within The Corporate Limits Of Fayetteville By Regulating Rock Quarrying Facilities So That These Facilities Will Not Be Nuisances

APPROVED FOR AGENDA:

Shirley Lucas — 8/25/09
Shirley Lucas — Date
Council Member

8/25/09
Sarah Lewis — Date
Council Member

8-10-09
Kit Williams — Date
City Attorney (as to form)

Left on Second Reading @ 9-15-09 CC Meeting
Left on First Reading @ 9-1-09 CC mtg.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **August 19, 2009**

RE: **Proposed Chapter 113 Rock Quarries and Red Dirt Mining Facilities of the Code of Fayetteville**

Several months ago, City Council members Sarah Lewis and Shirley Lucas asked me to attend a meeting of Ward 4 residents who were concerned and unhappy about problems caused to their neighborhood by a Rock Quarry and Red Dirt Mining Facility near their homes. These city residents described regular disturbing activities that operation of the quarry and red dirt mine were inflicting upon them in their homes and on their property. These nuisance type activities included:

(1) the dust, noise and vibration from frequent blasting of the rock for quarrying;

(2) the noise, dust and fumes from the machines operating at the quarry and red dirt mine;

(3) the large number of dump trucks which serviced the quarry and red dirt farm which often immediately entered city streets and caused traffic problems and safety issues during morning and afternoon school rush hours;

(4) the amount of red dirt and rocks that fell from these dump trucks onto city streets and right-of-way. These trucks were often uncovered with very little freeboard.

The City Council Ordinance Review Committee held several meetings to fine tune the initial ordinances I drafted pursuant to the requests of City Council Members Lucas and Lewis. Neighbors attended these public meetings and also provided input information and suggestions. The owners or managers of the rock quarry and red dirt mining operation did not attend to provide any input. I recommend that the ordinances be left on the first reading so that the rock quarry and red dirt mining owners and operators can review these ordinances for fairness and utility.

These ordinances would mandate that each operator of a rock quarry or red dirt mining facility within the city and within one mile of the city limits must obtain a license from the City to operate their facility. The ordinances prescribe measures that an operator must take to prevent his facility from being a nuisance to Fayetteville residents. These measures restrict:

(1) the frequency of allowed explosions;

(2) require dust control measures;

(3) restrict the days of operation to regular workdays (Monday-Friday);

(4) restrict the hours of operation with longer hours allowed in the summer when school is out;

(5) require dump trucks servicing the facility to have their loads covered more frequently than now allowed; and

(6) require other measures to abate the potential of the facility to be a nuisance to our citizens.

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING ROCK QUARRYING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has reviewed scientific evidence and listened to experts and determined that rock blasting causes unavoidably damaging effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry causes vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their homes; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent dust, fumes and noise from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating License** as shown below:

"

ARTICLE I.
Rock Quarry Operating License

"§113.01. Finding of Nuisance and Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

"§113.02. Abatement of Nuisance.

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one time per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to prevent the escape of dust from the rock quarry. During any period of a week or longer when the rock quarry is not operating, the operator shall take all measures necessary to ensure dust does not escape from the rock quarry.

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

"§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

"§113.04: Definitions.

(A) "*Explosive force*" means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) "*Rock Quarry*" means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(C) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(D) "*Operation of Rock Quarry*" means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

"113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

"§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

"**§113.07: No reduction in property owner's right to sue for nuisance.**

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner."

PASSED and **APPROVED** this the 1st day of September, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

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
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **September 10, 2009**

RE: **Amendments to Rock Quarry and Red Dirt Mining Facility Ordinances recommended by City Attorney**

I have some proposed amendments to what I handed out to you. In the **Definitions** section, I mistakenly left in (A) "*Explosive force*" which would have been necessary if we regulated how much explosive force would be allowed for explosions in the quarries and red dirt farms. However, I recommended and the Ordinance Review Committee agreed to remove any such attempted regulation because the state and federal laws and regulations had probably preempted this consideration. Thus, there is no need for the "*Explosive force*" definition which should be deleted from both ordinances and the other definitions renumbered.

I also recommend some modifications relating to dust and dust control measures. The Arkansas Department of Environmental Quality is given the exclusive power to regulate, control and abate "air pollution and contamination." A.C.A. §8-4-306. Although most citizens probably would not consider "dust" as air pollution, the definition of "Air Pollution" in the Water and Air Pollution Control Act (A.C.A. §8-4-301 *et seq.*) is so broad that it probably covers dust.

> "'Air pollution' means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities … which are materially injurious …, or which unreasonably interfere with enjoyment of life or use of property ...."
>
> "'Air contamination' means any solid, liquid, gas or vapor or any combination thereof." A.C.A. §8-4-303

Thus, the Arkansas Department of Environmental Quality has the sole right and power to regulate "dust" (a "solid" air contaminant) through the Water and Air Pollution Control Act. I, therefore, recommend the amendments to §113.02 (C)(1) *Dust Control Measures* which now refer to ADEQ permits, limitations and controls. Please see the attached proposed modified ordinances with this change in place.

As this ordinance may likely be challenged in Court, I considered adding a severability section, but I believe the Unified Development Code's general severability section (**§150.13 Severability**) is sufficient without adding a specific severability section for these ordinances.

I do recommend some minor changes in the "Whereas" clauses portion. I have removed "Reviewed scientific evidence" as I am unsure if such a review will actually occur and is not necessary for the passage of these ordinances. I have proposed a few other changes ("homes" replaced by "property") (adding "and citizens" after "experts" in the second "Whereas" clause) (inserting "properly" before "regulated and controlled" in the last "Whereas" clause) (adding "in excess of ADEQ permitted limits" in the last "Whereas" clause). I believe that these changes should strengthen these ordinances and so recommend your approval of these amendments.

Finally in §113.12 (A)(3) and §113.02 (A)(3), I replaced "one time" with "one day." Blasting in rock quarries does not happen in one large explosion, but many smaller explosions often only milliseconds apart. It has always been the intent to limit such explosions so that they occur on a single day per month not in a single explosion so that this change clarifies what was intended.

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING ROCK QUARRYING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting causes unavoidably damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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ARTICLE I.
Rock Quarry Operating License

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The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

"§113.02. Abatement of Nuisance.

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Rock Quarry Operating License.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No rock quarry shall be allowed to operate on a federally recognized holiday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

"§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

"§113.04: Definitions.

(A) "*Rock Quarry*" means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) "*Operation of Rock Quarry*" means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

"113.05: Issuance, Suspension or Revocation of License.

(A) *Issuance*. The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

"§113.06: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

"§113.07: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if such facility constitutes a private or public nuisance to that property owner."

PASSED and **APPROVED** this the 15th day of September, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

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

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

FROM: **Kit Williams**, City Attorney

DATE: **September 23, 2009**

RE: **Rogers Group proposed revisions to Rock Quarry Operating License Ordinance**

I met for a couple of hours today with representatives of the Rogers Group which operates the rock quarry inside the Stephen's Red Dirt Mining Facility. This is the more distant dirt farm and rock quarry. The Big Red Dirt Farm and quarry is closer to the city limits. We discussed their proposed changes to the ordinance which are explained in the attached Stephen Giles' letter of September 22, 2009, and shown on the ordinance with their revisions (mainly strikethroughs indicating words they would like deleted).

The vast majority of their proposed changes involve policy considerations for your decision rather than legal considerations. However, some do involve legal considerations which I address below.

If this ordinance is to be passed, we need most of the "Whereas" clauses now included in the ordinance. Although a minor change (adding "can" in the second clause) would not be damaging legally, removing the two clauses suggested by Rogers Group is not advisable.

I also oppose changing the title by changing "License" to "Regulations." I believe a license requirement will be much more effective in administering and enforcing this ordinance. Otherwise, the enforcement will primarily be criminal prosecution of a violation which would take a long time to get to District Court, provide a difficult burden of proof (beyond a reasonable doubt) with a defendant's right to remain silent, and allow only a small fine as a sanction. A revocable

license would be much faster, easier to prove and ensure it was the company rather than just a manager or employee being held responsible for violating the ordinance.

I do recommend that a variance be included with §113.02 (A) *Rock Blasting/Use of Explosives* for an emergency situation caused by weather or other circumstances. This would be granted (or denied) by the Director of Development Services or designee if an explosion would need to be delayed beyond 3:00 P.M. for safety reasons. Both Rogers Group and I will work on appropriate language for this variance.

I believe we need to retain all of §113.05 for the *Issuance, Suspension or Revocation of License*. Most of the Penalty section (§113.06) should also remain as is. I will recommend a minor change in subsection (D).

I do not have a problem with their proposed change in §113.07 which is what I believe is already the law.

The Law Firm of
Stephen R. Giles
A Professional Association

Telephone
(501) 687-0836

425 West Capitol Avenue
Suite 3200
Little Rock, Arkansas 72201-3469

E-mail: sgiles@gilcslaw.net

Facsimile
(501) 374-5092

September 22, 2009

VIA E-MAIL AND REGULAR MAIL

Kit Williams, Esq.
Fayetteville City Attorney
City of Fayetteville, Arkansas
113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

RE: Proposed Fayetteville Ordinance to Regulate Rock Quarrying Outside City Limits

Dear Kit:

Upon our review of the rock quarry ordinance to date it is our opinion that the City does not have jurisdiction to impose these regulations on Rogers Group, Inc. ("RGI). In addition, these ordinances go far beyond any reasonable regulation of the stated objectives of the ordinance and it will cause severe if not fatal economic impact on my client's operations if passed in its current form.

However, as we stated in the City Council meeting last Tuesday night, RGI desires to make a good faith effort to work with the City of Fayetteville to reach reasonable compromise in this matter. As requested, the comments below are an explanation of the changes we have made to the proposed ordinance and a mark-up copy of the quarry ordinance is also attached. Here are our initial comments to the draft.

Section 113.01: RGI objects to the "Finding of Nuisance" because the manner in which RGI operates the quarry does not constitute a nuisance. We suggest changing the heading of §113.02 to "Operating Regulations."

Section 113.02(A)(3): RGI proposes to limit blasting between the hours of 10:00 a.m. and 3:00 p.m. Monday through Friday and on non-holidays. The reason for the change is that it is not possible for RGI to blast a sufficient amount of stone for the entire month's sales in one day without reaching explosive limits in excess of vibration and airblast standards and regulations. RGI will, however, abide by the 5 hour window per weekday of blasting.

Section 113.02(B)(1): RGI proposes to limit its hours of operation between the hours of 7:00 a.m. until 6:00 p.m. Monday through Friday and 7:00 a.m. until noon on Saturday for sales only (no blasting or crushing). The City's proposed 8:30 a.m. to 3:00 p.m. hour limits on operations is unreasonable and is not supported by the information provided to the city council.

Section 113.02 (B) (2): This section was deleted for the reason that RGI's operations are so heavily regulated by federal, state and county requirements that this additional layer of regulation is unnecessary and would present an enforcement nightmare for the city and for RGI without accomplishing the objectives stated by the City.

Section 113.02(C): We propose to delete the word "constantly" which could be construed to mean 24/7 during hours in which the quarry is closed when it would have no control over the ordinance restrictions. Paragraph 2 has been deleted in its entirety. The reason is that trucks and equipment coming to and from the RGI quarry do not track an unreasonable amount of mud and dirt onto public roads because Rogers Group has paved over 1200 feet of its access to and from Hamstring Road. Most of the dust and mud, if any, is already removed prior to exit from RGI property. RGI does require that trucks taking product from the site are covered with a tarp as required in subsection 3.

Our initial review of subsections 4 and 5 of § 113.02 is that the requirement is unreasonable and unenforceable. RGI does not own any of the dump trucks that pick up stone at the site and some sales of stone go to private citizens and not to job sites to which RGI provides stone. Each truck accessing the site is required to have a DOT number and a state license plate for identification. RGI cannot force truck operators to display the numbers suggested in our ordinance.

Section 113.04: We suggest the addition of the phrase "as of the effective date of this ordinance" in your definition of house in §113.04(C). The reason is that the ordinance as drafted could be construed to mean the construction of a "house" or the movement of a mobile home within the area after the effective date of this ordinance.

RGI proposes the deletions and changes as shown in the attached mark-up of the ordinance because RGI must be able to work on its plant and operate water pumps and maintain equipment, etc. during hours in which it is not allowed to crush stone or sell the product. RGI does agree to limit its hours of operation as stated above.

Section 113.05: RGI has deleted this section entirely for the reason that the proposed licensing procedure is unreasonable and unenforceable.

Section 113.06: Insert the term "subject to prosecution" and delete the term "guilty of a criminal violation" in §113.06(A). The current draft suggests a prior admission of guilt upon the mere finding of a violation by the City. We have deleted subsection (B) entirely as RGI does not agree to any licensing by the City. In subsection (C) we again reiterate that an alleged violation is subject to prosecution. Due process requires that the City meet its burden of proof of violation and prosecution and a court of jurisdiction would determine guilt or innocence. RGI has deleted the words "manager" and "employee" from criminal responsibility for operational problems. RGI takes responsibility for its employees' actions.

We also question the use of the term "number of" when referring to explosions or explosive force in subsection (D). We have been unable to determine from your draft of this ordinance that the City intends to regulate the number of explosions but merely to time and day of blasting.

Section 113.07: Finally in §113.07 we inserted "a court of jurisdiction finds that" with reference to a citizen's right to file suit to enjoin a public or private nuisance.

These are my client's initial comments. A more in depth discussion and review may reveal additional suggestions for change or compromise. I look forward to meeting with you in the morning. Mr. Darin Matson of RGI will accompany me at this meeting and we would like to move the meeting forward to 10:00 a.m. if you are available. Thank you for your consideration of our comments.

Sincerely,

Stephen R. Giles

cc: Mr. Dan Rose (via e-mail)
Mr. Darin Matson (via e-mail)

[ROGERS GROUP REVISIONS 091809 -redlined]

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING ROCK QUARRYING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for rock quarries to supply necessary road building material within and near the corporate limits of Fayetteville; and

~~**WHEREAS**, the Fayetteville City Council has listened to experts and citizens and determined that rock blasting can causes unavoidably damaging or nuisance effects upon nearby structures (especially homes); and~~

~~**WHEREAS**, the Fayetteville City Council has also learned and determined that an operating rock quarry can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the quarry; and~~

WHEREAS, the Fayetteville City Council has ~~also~~ heard from citizens living near an existing and operating rock quarry and determined that unregulated rock blasting, rock crushing and other rock quarry activities ~~are~~ may become offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property; and

WHEREAS, unless the frequency of rock blasting, its distance from houses and the hours and days of rock quarry operation near residences is regulated and controlled to prevent noise, dust and fumes (in excess of ADEQ permitted limits) from escaping the quarry, such a rock quarry would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article I **Rock Quarry Operating ~~License~~ Regulations** as shown below:

"

ARTICLE I.
Rock Quarry Operating ~~License~~ Regulations

"§113.01. ~~Finding of Nuisance and~~ Need for Abatement.

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry ~~is~~ may become a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

"§113.02. ~~Abatement of Nuisance~~ Operating Regulations.

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed ~~one day per month~~ between the hours of 10:00 a.m. and 3:00 p.m. ~~during a single weekday (non-holiday)~~ Monday through Friday (non-holiday) up to a maximum of three (3) times per week pursuant to these Rock Quarry Operating ~~License~~ Regulations.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of ~~8:30 a.m. until 3:00 p.m.~~ 7:00 a.m. until 6:00 p.m. Monday through Friday and for sales only on Saturday from 7:00 a.m. until noon (no blasting or crushing). ~~from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th~~. No rock quarry shall be allowed to operate on a federally recognized holiday.

~~(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.~~

(C) *Dust, Mud and Rock Control Measures.*

All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing

duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are ~~constantly~~ enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for ~~a suspension or revocation~~ prosecution for violation of the City's Rock Quarry Operating Regulations ~~License~~. (See §133.05)

~~(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.~~

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

~~(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.~~

~~(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.~~

"§113.03: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

"§113.04: Definitions.

(A) "*Rock Quarry*" means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) "*House*" means any habitable structure existing and in place on the effective date of this ordinance including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) "*Operation of Rock Quarry*" means any blasting or crushing of stone and the sale and hauling of the product on site. ~~operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the rock quarry to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.~~

"~~**113.05: Issuance, Suspension or Revocation of License.**~~

~~(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.~~

~~(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.~~

~~(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.~~

~~(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.~~

"**§113.06: Penalty.**

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, ~~manager, or employee~~ of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be ~~guilty of a criminal violation~~ subject to prosecution for any violation of the requirements of this ordinance.

~~(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.~~

(C) Any owner, operator, ~~manager, or employee~~ or lessee of a rock quarry shall be ~~guilty of a criminal~~ subject to prosecution for violation if such person operates the rock quarry in violation of any of the terms of this ordinance. ~~without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License~~.

Allowed by blast events

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any rock blasting of this Ordinance ~~or the applicable Rock Quarry Operating License~~ shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

"**§113.07: No reduction in property owner's right to sue for nuisance.**

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if a court of competent jurisdiction finds that such facility constitutes a private or public nuisance to that property owner."

PASSED and **APPROVED** this the 15th day of September, 2009.

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

AGENDA REQUEST

FOR: COUNCIL MEETING OF SEPTEMBER 1, 2009

FROM:

Shirley Lucas, Council Member
Sarah Lewis, Council Member

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Prevent Injury Or Annoyance Within The Corporate Limits Of Fayetteville By Regulating Red Dirt Mining Facilities So That These Facilities Will Not Be Nuisances

APPROVED FOR AGENDA:

Shirley Lucas — 8/25/09
Shirley Lucas — Date
Council Member

8/25/09
Sarah Lewis — Date
Council Member

8-10-09
Kit Williams — Date
City Attorney (as to form)

Left on Second Reading @ 9-15-09 Meeting
Left on First Reading @ 9-1-09 mtg.

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

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **August 19, 2009**

RE: **Proposed Chapter 113 Rock Quarries and Red Dirt Mining Facilities of the Code of Fayetteville**

Several months ago, City Council members Sarah Lewis and Shirley Lucas asked me to attend a meeting of Ward 4 residents who were concerned and unhappy about problems caused to their neighborhood by a Rock Quarry and Red Dirt Mining Facility near their homes. These city residents described regular disturbing activities that operation of the quarry and red dirt mine were inflicting upon them in their homes and on their property. These nuisance type activities included:

(1) the dust, noise and vibration from frequent blasting of the rock for quarrying;

(2) the noise, dust and fumes from the machines operating at the quarry and red dirt mine;

(3) the large number of dump trucks which serviced the quarry and red dirt farm which often immediately entered city streets and caused traffic problems and safety issues during morning and afternoon school rush hours;

(4) the amount of red dirt and rocks that fell from these dump trucks onto city streets and right-of-way. These trucks were often uncovered with very little freeboard.

The City Council Ordinance Review Committee held several meetings to fine tune the initial ordinances I drafted pursuant to the requests of City Council Members Lucas and Lewis. Neighbors attended these public meetings and also provided input information and suggestions. The owners or managers of the rock quarry and red dirt mining operation did not attend to provide any input. I recommend that the ordinances be left on the first reading so that the rock quarry and red dirt mining owners and operators can review these ordinances for fairness and utility.

These ordinances would mandate that each operator of a rock quarry or red dirt mining facility within the city and within one mile of the city limits must obtain a license from the City to operate their facility. The ordinances prescribe measures that an operator must take to prevent his facility from being a nuisance to Fayetteville residents. These measures restrict:

(1) the frequency of allowed explosions;

(2) require dust control measures;

(3) restrict the days of operation to regular workdays (Monday-Friday);

(4) restrict the hours of operation with longer hours allowed in the summer when school is out;

(5) require dump trucks servicing the facility to have their loads covered more frequently than now allowed; and

(6) require other measures to abate the potential of the facility to be a nuisance to our citizens.

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING RED DIRT MINING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has reviewed scientific evidence and listened to experts and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility causes vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their homes and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences and the red dirt mining's dust causing activities are regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

PASSED and **APPROVED** this the 1st day of September, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

EXHIBIT "A"

ARTICLE II.

Red Dirt Mining Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one time per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) *Operation of Red Dirt Mining Facility.*

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the red dirt mining to prevent the escape of dust from the red dirt mining facility. During any period of a week or longer when the red dirt mining facility is not operating, the operator shall take all measures necessary to ensure dust does not escape from the red dirt mining facility.

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Explosive force*" means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) "*Red dirt mining*" means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(C) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(D) "*Operation of Red Dirt Mining Facility*" means any blasting, operation of any mechanical equipment on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the

engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

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
Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **September 10, 2009**

RE: **Amendments to Rock Quarry and Red Dirt Mining Facility Ordinances recommended by City Attorney**

I have some proposed amendments to what I handed out to you. In the **Definitions** section, I mistakenly left in (A) "*Explosive force*" which would have been necessary if we regulated how much explosive force would be allowed for explosions in the quarries and red dirt farms. However, I recommended and the Ordinance Review Committee agreed to remove any such attempted regulation because the state and federal laws and regulations had probably preempted this consideration. Thus, there is no need for the "*Explosive force*" definition which should be deleted from both ordinances and the other definitions renumbered.

I also recommend some modifications relating to dust and dust control measures. The Arkansas Department of Environmental Quality is given the exclusive power to regulate, control and abate "air pollution and contamination." A.C.A. §8-4-306. Although most citizens probably would not consider "dust" as air pollution, the definition of "Air Pollution" in the Water and Air Pollution Control Act (A.C.A. §8-4-301 *et seq.*) is so broad that it probably covers dust.

> "'Air pollution' means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities … which are materially injurious …, or which unreasonably interfere with enjoyment of life or use of property ...."
>
> "'Air contamination' means any solid, liquid, gas or vapor or any combination thereof." A.C.A. §8-4-303

Thus, the Arkansas Department of Environmental Quality has the sole right and power to regulate "dust" (a "solid" air contaminant) through the Water and Air Pollution Control Act. I, therefore, recommend the amendments to §113.02 (C)(1) *Dust Control Measures* which now refer to ADEQ permits, limitations and controls. Please see the attached proposed modified ordinances with this change in place.

As this ordinance may likely be challenged in Court, I considered adding a severability section, but I believe the Unified Development Code's general severability section **(§150.13 Severability)** is sufficient without adding a specific severability section for these ordinances.

I do recommend some minor changes in the "Whereas" clauses portion. I have removed "Reviewed scientific evidence" as I am unsure if such a review will actually occur and is not necessary for the passage of these ordinances. I have proposed a few other changes ("homes" replaced by "property") (adding "and citizens" after "experts" in the second "Whereas" clause) (inserting "properly" before "regulated and controlled" in the last "Whereas" clause) (adding "in excess of ADEQ permitted limits" in the last "Whereas" clause). I believe that these changes should strengthen these ordinances and so recommend your approval of these amendments.

Finally in §113.12 (A)(3) and §113.02 (A)(3), I replaced "one time" with "one day." Blasting in rock quarries does not happen in one large explosion, but many smaller explosions often only milliseconds apart. It has always been the intent to limit such explosions so that they occur on a single day per month not in a single explosion so that this change clarifies what was intended.

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING RED DIRT MINING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of the City of Fayetteville, Arkansas recognizes the need for red dirt mining facilities to supply necessary red dirt for building construction, parking lot and road construction within and near the corporate limits of Fayetteville; and

WHEREAS, the Fayetteville City Council has listened to experts and citizens and determined that any blasting that could be used in red dirt mining could cause unavoidable damaging or nuisance effects upon nearby structures (especially homes); and

WHEREAS, the Fayetteville City Council has also learned and determined that an operating red dirt mining facility can cause vibrations, dust, ground upheaval, loud noises, fumes and other deleterious effects within a mile from the red dirt mining facility; and

WHEREAS, the Fayetteville City Council has also heard from citizens living near an existing and operating red dirt mining facility and determined that unregulated blasting, dirt excavating, dump truck loading and other red dirt mining facility activities are offensive and potentially unhealthy and dangerous to Fayetteville citizens and damaging to their property and city streets;

WHEREAS, unless the frequency of blasting, its distance from houses, the hours and days of red dirt mining facility operation near residences and the red dirt mining's dust causing activities are properly regulated and controlled, such a red dirt mining facility would constitute a nuisance to Fayetteville residents and citizens and should be abated.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts Chapter 113 **Rock Quarries and Red Dirt Mining Facilities** of the Code of Fayetteville, Article II **Red Dirt Mining Facility Operating License** as shown on the attached Exhibit A.

PASSED and **APPROVED** this the 15th day of September, 2009.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

EXHIBIT "A"

ARTICLE II.

Red Dirt Mining Facility Operating License

§113.11. Finding of Nuisance and Need for Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility is a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

§113.12. Abatement of Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All blasting within the permitted red dirt mining facility shall only be allowed one day per month between the hours of 10:00 a.m. and 3:00 p.m. during a single weekday (non-holiday) pursuant to the Red Dirt Mining Operating License.

(B) *Operation of Red Dirt Mining Facility.*

(1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 8:30 a.m. until 3:00 p.m. Monday through Friday from August 20th through June 5th and during the period of 8:00 a.m. until 5:30 p.m. Monday through Friday from June 6th through August 19th. No red dirt mining facility shall be allowed to operate on a federally recognized holiday.

(2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the red dirt mining to ensure the red dirt mining facility is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Red Dirt Mining Facility Operating License.

(2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.

(3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contract information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

§113.13: Jurisdiction of This Ordinance.

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all red dirt mining facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

§113.14: Definitions.

(A) "*Explosive force*" means the amount of explosive power generated by various types of explosive substances such as dynamite, blasting powder, etc.

(B) "*Red dirt mining*" means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.

(C) "*House*" means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(D) "*Operation of Red Dirt Mining Facility*" means any blasting, operation of any mechanical equipment

on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility. However, as long as the dust control measures remain in operation and effective, dump trucks may be driven onto the red dirt mining facility to park (but may not be loaded) on the premises up until 5:30 p.m. during the August 20th to June 5th period.

113.15: Issuance, Suspension or Revocation of License.

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.

(B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

§113.16: Penalty.

(A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.

(C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.

(D) Each violation of the operational hour limitations or the number of explosions or the explosive force of any blasting of this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

§113.17: No reduction in property owner's right to sue for nuisance.

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a red dirt mining facility if such facility constitutes a private or public nuisance to that property owner.

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

October 6 2009
City Council Meeting Date
Agenda Items Only

Paul A. Becker	Finance Director	Finance & Internal Services
Submitted By	**Division**	**Department**

Action Required:

This is a request for approval of a bond ordinance to issue sales tax bonds in an amount not to exceed $11,250,000.$9,950,000 of these bonds would be for the Street Project and $1,300,000 would be for the Trails Project.These bonds were authorized pursuant to Ordinance No. 4891 adopted on June 20,2006 which was approved by the voters at a special election held on September 12,2006.

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

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Paul A. Becker — Department Director — Date 9-17-2009

City Attorney — Date 9-18-09

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Paul A. Becker — Finance and Internal Services Director — Date 9-18-2009

Chief of Staff — Date 9-19-09

Mayor — Date 9/21/09

Received in City Clerk's Office — ENTERED 9-17-09 KG

Received in Mayor's Office — ENTERED 9/18/09 P.H.

Comments:

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: **Mayor Lioneld Jordan and Fayetteville City Council**

From: **Paul Becker, Finance Director**

Date: **September 17, 2009**

Subject: **Issuance of Sales Tax Bonds in the amount of $11,250,000**

Recommendation

Staff recommends approval of an ordinance requesting the council to approve the issuance of $11,250,000 worth of sales tax bonds for the Street and Trails Programs.

Discussion

On September 12, 2006 the voters of Fayetteville approved the issuance of $110,000,000 worth of sales tax bonds for the following projects:

WSIP - $42,000,000
Street Project- $65,900,000
Trails Project- $2,100,000

Subsequent to that referendum the City issued sales tax bonds in 2006 and 2007 as follows:

WSIP- $39,340,000
Street Project-$24,200,000
Trails Project-$ 800,000

This bond issue, if approved, will provide $9,950,000 for the continuation of the Street Bond Project and $1,300,000 for the Trails Bond Project. This will leave a balance of $31,750,000, to be issued (when capacity allows) for the completion of the Street Bond Project.

Budget

The approval of this ordinance will provide funds for continued work on the Bond Street Project and complete the funding on the Bond Trail Program.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Lioneld Jordan**, Mayor
City Council
Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney

DATE: **September 18, 2009**

RE: **2009 Sales and Use Tax Bond Ordinance**

The attached Bond Ordinance was prepared by Gordon Wilbourn of Kutak Rock, LLP with advice and comments from City Staff and Dennis Hunt of Stephens, Inc. Although the City had some problems with bond ordinances in the 1980's and 90's (which cost our citizen's millions of dollars in attorney's fees), we have avoided all such problems in this decade with our new team of Gordon and Dennis carefully advising City Staff.

The creation of the Bond Ordinance and all of its necessary supporting documents: Trust Indentures, Preliminary and Final Official Statements, Bond Purchase Agreement, Continuing Disclosure Agreement, Tax Regulatory Agreement, and Opinions letters from Kutak Rock and me is a months long process of drafting, reviews and modifications. Attached is the Schedule of Events Stephen's, Inc. prepared for this bond issuance which shows all the meetings and work necessary to get this ordinance to you.

Stephen's Inc. has estimated that these bonds will generate $11.25 million with almost $11 million net deposited into the City's construction fund. Costs of issuance will be about $190,000 (which is less than 1.7% of the amount obtained). Attached is a document prepared by Stephens, Inc. showing all uses of the funds generated by sale of the bonds.

It is estimated that these bonds will be paid off on November 1, 2021 with a total accrued interest cost of $3,773,210. Thus, about three out of every four sales tax dollars collected and paid on these bonds will be used to pay off the **principal** while only one is necessary to pay interest on the bonds over the twelve year pay off period. This excellent cost ratio is possible because these tax exempt bonds can probably be sold in the 3.6% range and the twelve year pay off period prevents the much higher interest costs of a 20 or 30 year note. This low payoff is possible even though no principal payments on these bonds are to be made until November 1, 2015 (after an earlier bond issuance is paid off).

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2009, FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF CERTAIN STREET AND TRAIL SYSTEM IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a great need for a source of revenue to finance the costs of various street and trail system improvements within the City (the "2009 Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2005 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the 2009 Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4891 of the City, adopted and approved on June 20, 2006 (the "Election Ordinance"), there was submitted to the qualified electors of the City four questions regarding the issuance of an aggregate of not to exceed $110,000,000 in principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the capital improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon (i) all of the receipts of a special city-wide sales and use tax levied at the rate of one-quarter of one percent (0.25%) pursuant to the Local Government Bond Act (the "0.25% Sales and Use Tax") and (ii) all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "0.75% Sales and Use Tax"); and

WHEREAS, at a special election held September 12, 2006, a majority of the qualified electors of the City voting on the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax, and the pledge of the receipts thereof to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2009, in the aggregate principal amount of not to exceed $11,250,000 (the "Bonds"), in order to provide for the funding of the 2009 Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Fayetteville, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to and before this meeting;

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

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2009" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Eleven Million Two Hundred Fifty Thousand Dollars ($11,250,000) and shall mature not later than November 1, 2023, in the principal amounts and bearing interest at the rates specified in the Bond Purchase Agreement. $9,950,000 aggregate principal amount of the Bonds hereby authorized shall be deemed to apply to the Street Project described in Question 3 of the ballot and $1,300,000 aggregate principal amount of the Bonds hereby authorized shall be deemed to apply to the Trail Project described in Question 4 of the ballot.

The average yield on the Bonds as a whole shall not exceed 4.75% per annum, and the yield on no single Bond shall exceed 5.25%. The proceeds of the Bonds will be utilized to finance the costs of the 2009 Project, to establish a debt service reserve for the Bonds or to purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Second Supplemental Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the Second Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Second Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the City's $50,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"), and the City's $14,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2007 (the "Series 2007 Bonds"). The levy and collection of the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax shall commence on the dates provided in the Local Government Bond Act and shall continue until such time as the Series 2006A Bonds, the Series 2007 Bonds and the Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee to redeem the Series 2006A Bonds, the Series 2007 Bonds and the Bonds in full. The City covenants and agrees that all receipts from the 0.25% Sales and Use Tax and the 0.75% Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said 0.25% Sales and Use Tax and 0.75% Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture (as defined below).

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Second Supplemental Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Second Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Second Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Second Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of

November 1, 2006, as previously amended by a First Supplemental Trust Indenture dated as of October 1, 2007, each by and between the City and the Trustee (the "Original Indenture," and collectively with the Second Supplemental Trust Indenture, the "Trust Indenture"). The Second Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of 0.25% Sales and Use Tax receipts and 0.75% Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Second Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Second Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Second Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the 0.25% Sales and Use Tax, the 0.75% Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Second Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The City hereby represents and covenants that the aggregate principal amount of its tax-exempt obligations (excluding "private activity bonds" within the meaning of Section 141 of the Code), including those of its subordinate entities, issued in calendar year 2009 will not exceed $30,000,000.

Section 11. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 12. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and **APPROVED** this 6th day of September, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

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

Stephens Inc.

City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvements Bonds, Series 2009

Preliminary Schedule of Events

August 11, 2009

August 2009						
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September 2009						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October 2009						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2009						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

2009 Date	Event	Responsible Parties
August 21	Distribute first draft of financing documents	KR
August 27	Comments due on financing documents	All Parties
September 3	Distribute blacklined financing documents	KR
September 9	Send financing documents to rating agency and insurers	Stephens
September 14	Present financing to Fayetteville Street Committee	City / Stephens
September 17	Send Bond Ordinance to City for distribution to City Council	KR
September 18	Conference call with rating agency to discuss issue	City / Stephens
October 1	Obtain rating	Stephens
October 6	Obtain insurance	Stephens
October 6	Approval of Parameters Bond Ordinance	City / Stephens / KR
October 8	Publish Bond Ordinance	KR / City
October 8	Finalize Preliminary Official Statement with insurer provisions	KR
October 12	Electronically distribute Preliminary Official Statements to investors	Stephens
October 19	Review offering details with the City	Stephens
October 20	Offer bonds	Stephens

Stephens Inc.

October 21	Commit to underwrite bond issue	Stephens
October 21	Execute Bond Purchase Agreement	City / Stephens
October 26	Prepare and distribute closing documents	KR
October 29	Comments due on closing documents	All Parties
November 12	Closing and distribution of bond proceeds	All Parties

City of Fayetteville, Arkansas

Sales and Use Tax Bonds
Series 2009

Sources & Uses

Dated 11/01/2009 | Delivered 11/04/2009

Sources Of Funds	
Par Amount of Bonds	$11,250,000.00
Accrued Interest from 11/01/2009 to 11/04/2009	3,349.88
Total Sources	**$11,253,349.88**

Uses Of Funds	
Deposit to Project Construction Fund	10,968,000.00
Costs of Issuance	190,000.00
Gross Bond Insurance Premium (50.0 bp)	75,116.05
Surety Bond	16,875.00
Deposit to Debt Service Fund	3,349.88
Rounding Amount	8.95
Total Uses	**$11,253,349.88**

City of Fayetteville, Arkansas

Sales and Use Tax Bonds
Series 2009

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
11/1/2010	-	-	401,985.00	401,985.00
11/1/2011	-	-	401,985.00	401,985.00
11/1/2012	-	-	401,985.00	401,985.00
11/1/2013	-	-	401,985.00	401,985.00
11/1/2014	-	-	401,985.00	401,985.00
11/1/2015	1,455,000.00	2.800%	401,985.00	1,856,985.00
11/1/2016	1,500,000.00	3.100%	361,245.00	1,861,245.00
11/1/2017	1,545,000.00	3.350%	314,745.00	1,859,745.00
11/1/2018	1,595,000.00	3.600%	262,987.50	1,857,987.50
11/1/2019	1,655,000.00	3.800%	205,567.50	1,860,567.50
11/1/2020	1,715,000.00	4.000%	142,677.50	1,857,677.50
11/1/2021	1,785,000.00	4.150%	74,077.50	1,859,077.50
Total	**$11,250,000.00**	**-**	**$3,773,210.00**	**$15,023,210.00**

Yield Statistics

Accrued Interest from 11/01/2009 to 11/04/2009	3,349.88
Bond Year Dollars	$102,780.00
Average Life	9.136 Years
Average Coupon	3.6711520%
Net Interest Cost (NIC)	3.6711520%
True Interest Cost (TIC)	3.6570944%
Bond Yield for Arbitrage Purposes	3.7641307%
All Inclusive Cost (AIC)	3.9886237%

IRS Form 8038

Net Interest Cost	3.6712414%
Weighted Average Maturity	9.128 Years

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

Paul A. Becker	Finance & Internal Services	Finance & Internal Services
Submitted By	**Division**	**Department**

Action Required:

City Council is requested to adopt real and personal property tax rates for 2009 for the Policemen's Pension & Relief, the Firemen's Pension & Relief Funds, and the Fayetteville Public Library. The rate to be adopted for the Policemen's Pension & Relief Fund and the Firemen's Pension & Relief Fund is 0.4 mils for real property and 0.4 mils for personal property, the millage for the Fayetteville Public Library is 1.0 mil for real property and 1.0 mil for personal property. City Council is also requested to adopt real and personal property tax rates for 2009 for the City's General Fund. The rate requested for the City's General Fund is 1.3 mils for real property and 1.3 mils for personal property.

	$ -	
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** ☐

Paul A. Becker — 9-17-2009
Department Director — Date

9-18-09
City Attorney — Date

Previous Ordinance or Resolution # 5178
Original Contract Date:
Original Contract Number:

Paul A. Becker — 9-18-2009
Finance and Internal Services Director — Date

9-19-08
Chief of Staff — Date

9/21/09
Mayor — Date

Received in City Clerk's Office — ENTERED 9-17-09

Received in Mayor's Office — ENTERED 9/18/09

Comments:

Fayetteville
ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Lioneld Jordan and Fayetteville City Council

THRU: Don Marr, Chief of Staff

FROM: Paul A. Becker, Finance & Internal Services Director

DATE: September 16, 2009

SUBJECT: **2009 Millage Levy**

Recommendation:

City staff recommends that City Council approve the millage levy ordinance approving the 0.4 mils for the Policemen's Pension and Relief Fund, 0.4 mils for the Firemen's Pension and Relief Fund, 1.0 mils for the Fayetteville Public Library, and 1.3 mils for 2010 General Fund operations.

Background:

Each year the City must approve an ordinance to renew the levy of ad valorem taxes on real and personal property within the City. This request will provide for such levy on property assessed during 2009.

The total assessed value of real and personal property located within the city limits of Fayetteville, as of August 5, 2009, is approximately $1.3 billion. The assessed valuation is before the Washington County Board of Equalization has made all the changes to the County Assessors Abstract. Based on the preliminary assessments, the growth in real property assessments is approximately 5.27% as of August 5, 2009.

Discussion:

A millage levy ordinance must be approved by City Council in order for the City to continue to collect property taxes for the Policemen's Pension and Relief Fund and the Firemen's Pension and Relief Fund. The millage levy for the Policemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property. The millage levy for the Firemen's Pension and Relief Fund is 0.4 mils for real property and 0.4 mils on personal property as was approved by referendum.

A millage levy ordinance must be approved for the operation of the Fayetteville Public Library and that was approved by the voters on October 1, 2002. The millage levy for the Fayetteville Public Library is 1.0 mils for real property and 1.0 mils on personal property.

Finally, City staff is requesting that City Council approve a millage levy ordinance for General Fund operations in the amount of 1.3 mils for both real and personal property.

The 2010 proposed property tax revenue amount based on the 1.3 mil levy is estimated to bring in $1,570,000 in General Fund revenue. The 2010 Proposed General Fund Budget will be distributed to City Council on Tuesday, September 29 at the City Council agenda session. Additional meetings during the months of September and October to discuss the millage levy will be held as needed. A proposed calendar is shown below:

Tuesday, September 29	Agenda Session / 2010 General Fund Budget Distributed
Tuesday, October 6	City Council Meeting
Tuesday, October 13	Agenda Session
Tuesday, October 20	City Council Meeting

Budget Impact:

The 0.4 mils Police and 0.4 mils Fire is needed to fund the Pension plans for both. The 1.0 mils is used to fund the operation of the Fayetteville Public Library. The 1.3 mils will be used to fund General Fund operations.

Conclusion:

The millage levy must be at Washington County in time to be included in their consolidated levy ordinance which will be approved at the November 12, Quorum Court meeting. The deadline for receipt is set by the County. Last year that deadline was October 30. The City levy will be added to the levies by Washington County, the various school districts, improvement districts and other cities within the County when the Washington County Quorum Court adopts its millage levy for 2009.

The administration is requesting the same millage rate as was approved in 2008 as follows:

1.3 mils for General Fund Operations
1.0 mils for the Fayetteville Public Library
0.4 mils for the Police Pension Fund
0.4 mils for the Fire Pension Fund

If you have any questions concerning this agenda request please contact me at 575-8330.

City of Fayetteville
Property Tax Revenue per Mil
August 8, 2009

Millage	Approximate Revenue
0.10	$ 121,000
0.20	$ 241,000
0.30	$ 362,000
0.40	$ 483,000
0.50	$ 604,000
0.60	$ 724,000
0.70	$ 845,000
0.80	$ 966,000
0.90	$ 1,087,000
1.00	$ 1,207,000
1.20	$ 1,449,000
1.30	$ 1,570,000
2.00	$ 2,415,000
2.20	$ 2,656,000
2.70	$ 3,260,000
3.20	$ 3,864,000
3.70	$ 4,467,000
4.20	$ 5,071,000
4.70	$ 5,675,000

The millage revenue reflected above is based on the Washington County Preliminary Summary Report of County Assessments for the Year 2009 dated August 8, 2009 and excludes real and personal property for Utilities. The City Council can approve up to 5.0 mils for operations. The table assumes a 93% collection rate. Total real and personal property assessments for 2009 amount to approximately $1,261 million excluding real estate and personal property for utilities.

Property Tax Impact Illustration

	Appraised Value	Assessed Value	1 Mil Tax / Year
Single Family Home	$ 75,000.00	$ 15,000.00	$ 15.00
Single Family Home	$ 100,000.00	$ 20,000.00	$ 20.00
Single Family Home	$ 150,000.00	$ 30,000.00	$ 30.00

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

FROM: **Kit Williams**, City Attorney

DATE: **September 18, 2009**

RE: **Ordinance Levying Millage**

The millage ordinance presented by the City Administration mirrors the millage ordinance passed last year (and previously). The only difference is that this ordinance applies to property assessed in 2009 instead of 2008.

ORDINANCE NO. _____

AN ORDINANCE LEVYING A TAX ON THE REAL AND PERSONAL PROPERTY WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS, FOR THE YEAR 2009 FIXING THE RATE THEREOF AT 1.3 MILLS FOR GENERAL FUND OPERATIONS, 0.4 MILLS FOR THE FIREMEN'S PENSION AND RELIEF FUND, 0.4 MILLS FOR THE POLICEMEN'S PENSION AND RELIEF FUND AND 1.0 MILL FOR THE FAYETTEVILLE PUBLIC LIBRARY; AND CERTIFYING THE SAME TO THE COUNTY CLERK OF WASHINGTON COUNTY, ARKANSAS

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

Section 1: That a tax is hereby levied on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 to be collected in 2010 for the following purposes at the following rates:

REAL AND PERSONAL PROPERTY

Purpose		Levy
General Fund – Operations		1.3 mills
Fayetteville Public Library		1.0 mills
Policemen's Pension Fund		0.4 mills
Firemen's Pension Fund		0.4 mills
	TOTAL	3.1 mills

Section 2: That the real and personal property tax so levied and the rates provided therefore are hereby certified to the Clerk of Washington County, Arkansas, to be placed in the tax book by the County Clerk and collected in the same manner that the county and school district taxes are collected.

Section 3: The City Clerk is hereby authorized and directed to file certified copies of this ordinance in the office of the County Recorder, County Clerk, County Assessor, and the County Tax Collector for Washington County, Arkansas.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

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

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

10/6/2009
City Council Meeting Date
Agenda Items Only

David Jurgens	Solid Waste	Utilities
Submitted By	**Division**	**Department**

Action Required:

Approval and Ordinance Waiving the Automatic Annual Price Adjustment for Residential Trash and Updating and Correcting Section 50.40 of the Solid Waste Ordinance Relating to Recycling and Rates.

$ -	$ -	
Cost of this request	Category / Project Budget	Program Category / Project Name
5500.0950.4430.21	$ -	Solid Waste Fund Revenue
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	Solid Waste
Project Number	Remaining Balance	Fund Name

Budgeted Item ☐ **Budget Adjustment Attached** ☐

Department Director	18 Sep 09 Date	Previous Ordinance or Resolution #	N/A
City Attorney	9/22/09 Date	Original Contract Date:	N/A
Finance and Internal Services Director	9/23/09 Date	Original Contract Number:	N/A
Chief of Staff	9/23/09 Date	Received in City Clerk's Office	ENTERED 9/18/09
Mayor	9/29/09 Date	Received in Mayor's Office	ENTERED 9/22/09 BB

Comments:

Fayetteville
ARKANSAS

City Council Meeting of October 6, 2009

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Fayetteville Water and Sewer Committee
Don Marr, Chief of Staff

From: David Jurgens, P.E., Utilities Director

Date: September 18, 2009

Subject: Approval and Ordinance Waiving the Automatic Annual Price Adjustment for Residential Trash and Updating and Correcting Section 50.40 of the Solid Waste Ordinance Relating to Recycling and Rates

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RECOMMENDATION

City Administration recommends approval of an ordinance waiving the automatic annual price adjustment for residential trash and updating and correcting the solid waste rate ordinance, specifically rescinding and replacing Section 50.40 of the Fayetteville Code of Ordinances.

BACKGROUND

Solid waste rates were established in 2000 based on the DMG Maximus (DMG) rate study. When reviewing the rate section of the ordinance, staff realized that there were several items unintentionally omitted at that time, and several other items not updated since.

Additionally, ordinance 4765 allows for annual adjustments of the residential trash rate equal to the consumer price index. This adjustment has been waived for both 2008 and 2009.

DISCUSSION

The following corrections are reflected in the proposed ordinance (attached):

- In 2000, no rate was formally set for cardboard recycling, although the rate of 50% of normal dumpster costs is being charged.
- Container rental charges were not included in the ordinance.
- No rate was set for small business commercial recycling. This program has been in a trial basis, with no charge to the commercial customer, since approximately 2000. A number of additional businesses have been on a waiting list to receive this service, but it could not be increased until a rate was formally established. The actual cost of service is the same as residential recycling, so the residential rate, as identified in the 2009 R. W. Beck Recycling Study, is being applied. Customers in this program have reduced trash volume, creating a potential savings in their trash rate if they use a smaller trash container or have a reduced pick up frequency.

Commercial solid waste rates have not changed since 2000. Staff intends to perform a rate study in 2010 to evaluate all solid waste rates.

BUDGET IMPACT

This rate ordinance will create a slight revenue increase due to the extension of the existing residential recycling rate to small commercial customers.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE AUTOMATIC ANNUAL PRICE INCREASE FOR RESIDENTIAL TRASH SERVICE FOR FISCAL YEAR 2010; AND AMENDING A PORTION OF CHAPTER 50: GARBAGE AND TRASH OF THE FAYETTEVILLE CODE OF ORDINANCES.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby waives § 50.40 (A) (4) of the Fayetteville Code of Ordinances, and cancels the Annual Price Increase for Residential Trash Service for Fiscal Year 2010.

Section 2. That § 50.40 Rates for Services, of the Fayetteville Code of Ordinances is hereby repealed, and the language set forth in the attached Exhibit A is adopted in its stead.

PASSED and **APPROVED** this 6th day of October, 2009.

APPROVED: ATTEST:

By: _____ By: _____

DAN COODY, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

EXHIBIT A

COLLECTION CHARGES; BILLING

50.40 Rates For Services

(A) *Residential service.* Garbage and trash shall be collected from residential customers one time each week for the following rates:

Garbage/Trash User Fee Schedule

Container Volume	Fixed Fee	Graduated Volume Fee	Cart replace-ment	Monthly Rate
32	$6.13	$2.19	$0.43	$8.75
64	$6.13	$6.68	$0.54	$13.35
96	$6.13	$12.13	$0.70	$18.96

(1) There shall be no charge for the collection of residential yard waste.

(2) Residential service customers shall receive bulk collection at no charge one time per year.

(3) If a residential customer wishes to exchange to a larger residential garbage cart size, the customer shall be assessed a twenty dollar ($20.00) cart exchange fee. No fee shall be assessed for customers wishing to exchange to a smaller cart.

(4) The Garbage/Trash User Fee shall be adjusted annually based upon the Consumer Price Index (CPI) as published by the U.S. Department of Labor.

(B) *Commercial service.* Trash shall be collected from commercial customers as shown below.

(1) The monthly commercial rate shall be:

Commercial User Fee Schedule

Commercial Container Size	Rate Per Pickup
95 Gallon Cart	$15.90
2 cubic yards	$32.76
4 cubic yards	$65.52
6 cubic yards	$98.28
8 cubic yards	$131.04

(2) Commercial 95 gallon carts have a maximum of four pickups per week, Monday through Thursday. Larger commercial containers shall be serviced a minimum of once per week and a maximum of six times per week, Monday through Saturday, except authorized holidays for City employees and unavoidable inclement weather.

(3) The rate for providing extra collection of any 95 gallon cart shall be twice the monthly collection rate based on the number of collections per week as established by §50.40(B)(1). The rate for providing extra collection of any commercial loadall type container shall be $8.19 per cubic yard.

(4) The rate for providing cardboard and paper recycling service shall be $8.19 per cubic yard.

(5) Container rental is a flat fee per month.

Container Rental/Dumpster Lease Fee Schedule

Container Size (Cubic Yards)	Monthly Rate
2 yd	$12.89
4 yd	$14.73
6 yd	$17.14
8 yd	$20.24

(C) *Loadall type container service.* The monthly rate for one pickup per week for any commercial establishment using loadall type containers for collection of garbage shall be $16.38 per cubic yard collected.

(D) *Commercial Recycling.* Limited commercial recycling is offered per the table below.

Recycling User Fee Schedule

Size	Once Per Week
4 yd cardboard	$32.76
6 yd cardboard	$49.14
8 yd cardboard	$65.52
4 yd paper	$32.76
18 gal recycle bin (per bin)	$5.88

(E) *Use of composting facility.*

(1) Businesses, including commercial landscapers and tree trimmers, and nonresidents that bring brush to the City's composting facility for disposal will be charged as follows:

Composting User Fee Schedule

Size	Rate
Compact pickup trucks	$5.00
Full size pickup trucks	$8.00
Trailers up to 14 feet long	$10.00
Trailers greater than 14 feet long	$15.00

September 17, 2009

Jeremy Pate
Development Services Director
City of Fayetteville
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Old Wire Annexation - Appeal of Planning Commission denial

Mr. Pate:

On behalf of our client, we wish to appeal the September 14, 2009 City of Fayetteville Planning Commissions decision to deny ANX 09-3409 - Broyles/ 3231 N. Old Wire Road.
We request that this item be place on the next available City Council meeting.

Respectfully,

Todd Jacobs

Todd Jacobs
Director of Design
Appian Centre for Design
509 West Sprint Street, Suite 420
Fayetteville, Arkansas 72701
Office: 479-442-1444

City Council Meeting of October 6, 2009
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Jeremy C. Pate, Development Services Director

From: Andrew Garner, Senior Planner

Date: September 16, 2009

Subject: Annexation for Broyles (ANX 09-3409)

RECOMMENDATION

Staff and the Planning Commission recommend denial of annexing the subject 39.33-acre property, located at the northwest corner of Old Wire Road and Rom Orchard Road. The applicant has appealed the Planning Commission decision to deny this request to the City Council.

BACKGROUND

Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006, expressing concern about the extension of the city in this area, development patterns, density, and compatibility, and the resulting extension of the boundary. The meeting minutes from these previous Planning Commission meetings are attached to the staff report.

The applicant proposes to annex the subject 39.33 acres into the City. The applicant has stated an intent to propose a 200-acre master plan for a traditional neighborhood development, including the subject property.

DISCUSSION

This item was heard at the regular Planning Commission meeting on September 16, 2009. The Planning Commission voted 5-4-0 (commissioners Winston, Graves, Kennedy, and Trumbo voting "no") to deny this rezoning request. Several neighbors in the area spoke against rezoning the subject property to RSF-4, however, the applicant has withdrawn the rezoning application. Written comments from the neighbors are attached to the staff report.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE ANNEXING THAT PROPERTY DESCRIBED IN ANNEXATION PETITION ANX 09-3409 (CC2009-4), FOR PROPERTY LOCATED AT 3231 NORTH OLD WIRE ROAD, THE NORTHWEST CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD, CONTAINING APPROXIMATELY 39 ACRES.

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

Section 1: That the City Council hereby confirms the annexation to the City of Fayetteville, Arkansas, as shown in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

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

Section 3: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to assign the zoning designation of R-A, Residential Agricultural to the subject property.

Section 4: That the above-described property is hereby assigned to Ward No. Three.

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

APPROVED: ATTEST:

By: _____ By: _____

LIONELD JORDAN, Mayor **SONDRA E. SMITH,** City Clerk

EXHIBIT "A"

ANX09-3409

Close Up View

BROYLES

Overview

0 150 300 600 900 1,200 Feet

EXHIBIT "B"
ANX 09-3409

DESCRIPTION (PARCEL NOS. 001-15604-000, 001-15605-000, 001-15606-000,001-15608-000, 001-15608-001, 001-15609-000, AND 001-15610-000)

ALL OF THE LAND DESCRIBED IN THE DEEDS RECORDED AS FILE NUMBERS 93-3908, 2005-18120, 2005-18121, 2005-18122, 2005-18123, 2006-22924, AND 2009-9274 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS RESIDING IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 17 NORTH, RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N02°26'06"E, ALONG THE WEST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1315.03 FEET TO THE NORTHWEST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S87°16'13"E, ALONG THE NORTH LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1319.96 FEET TO THE NORTHEAST CORNER OF THE ABOVE SAID SOUTHWEST 1/4; THENCE S02°29'32"W, ALONG THE EAST LINE OF THE ABOVE SAID SOUTHWEST 1/4, A DISTANCE OF 1016.73 FEET; THENCE S18°21'47"W, LEAVING THE ABOVE SAID EAST LINE, A DISTANCE OF 116.92 FEET; THENCE S34°39'26"W, A DISTANCE OF 96.67 FEET; THENCE S52°01'42"W, A DISTANCE OF 94.13 FEET; THENCE S69°02'13"W, A DISTANCE OF 95.91 FEET; THENCE S86°30'36"W, A DISTANCE OF 46.95 FEET TO A POINT ON THE SOUTH LINE OF THE ABOVE SAID SOUTHWEST 1/4; THENCE N87°11'42"W,ALONG THE ABOVE SAID SOUTH LINE, A DISTANCE OF 1028.91 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,713,107 SQUARE FEET OR 39.33 ACRES,MORE OR LESS.

Fayetteville
ARKANSAS

PC Meeting of September 14, 2009

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Andrew Garner, Senior Planner
THRU:	Jeremy Pate, Development Services Director
DATE:	~~September 8, 2009~~ *Updated September 16, 2009*

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

Background: Most of the property in this annexation request was included in annexation and rezoning requests that were heard by the Planning Commission on October 10, 2005 and again on May 8, 2006. Planning Staff recommended denial of all requests. The Planning Commission denied or tabled both the annexation and rezoning requests in 2005 and 2006. The meeting minutes from these previous Planning Commission meetings are attached to the staff report for the associated rezoning (RZN 09-3410 Broyles) also being heard at this planning commission meting.

Property: The property is located northwest of the intersection of Old Wire Road and Rom Orchard Road. As depicted in *Table 1*, the site is surrounded by rural residential and undeveloped pasture, with unincorporated Washington County to the north, east, and south, and property zoned Residential Agricultural (R-A) in the City of Fayetteville to the west.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Rural residential; pasture	Planning Area
South	Rural residential; pasture	Planning Area
East	Rural residential; pasture	Planning Area
West	Rural residential; pasture	R-A, Residential Agricultural; Planning Area

The nearest developed subdivision is Paradise Valley Estates in the Planning Area, located approximately 1,600 feet east of the subject property and developed for single-family use with a density of approximately 1 unit per two acres.

Proposal: The applicant intends to annex and rezone this property and stated intent to develop a traditional neighborhood. If the annexation for this property is approved, the request is to rezone the property from R-A, Residential Agricultural to RSF-4, Residential Single-family, 4 units per acre. However, the applicant stated intent to propose a 200-acre master plan for a traditional neighborhood

development, including the subject property.

Request: The request is to annex the property into the City of Fayetteville

Public Comment: Staff has received several phone calls, emails, and letters in opposition to the proposed rezoning. The opposition cites concern that a density of four units per acre is not compatible with the surrounding rural residential character and would result in adverse impacts to traffic safety and property values.

INFRASTRUCTURE:

Streets: Currently the site has access to Old Wire Road. With development, road improvements and dedication per the Master Street Plan would be required. Surrounding Master Street Plan Streets are shown on *Table 2*.

Table 2
Surrounding Master Street Plan Streets

Direction from Site	Street Name	Master Street Plan Classification
South	Old Wire Road	Collector Street
East	Old Wire Road	Collector Street
Southeast	Rom Orchard Road	Local Street

Water: Public water is adjacent to the site. There is a four-inch waterline along the south side of Old Wire Road. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sewer: Sanitary sewer is not adjacent to the site. The nearest sewer main an 18-inch public main about 2,500 feet west of the site at the intersection of Old Wire Road/Crossover Road. Public sewer mains may need to be extended to the property to serve any proposed development, depending on the nature and density of the development.

Fire: The subject property is located 1.5 miles from the Fire Station No. 5 at 2979 North Crossover Road. Projected response time at full development of this property is projected at 4 minutes to the beginning of this development.

Police: The Fayetteville Police Department stated concern that this application may cause substantial call volume increase and will effect traffic congestion in the area. The Police Department also commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.

RECOMMENDATION:

Staff recommends denial of the requested annexation based on the findings included in this report.

PLANNING COMMISSION ACTION:	**Required**	**YES**
	☐ Forwarded	**X Denied**
Date: September 14, 2009	**Motion: Myres**	
	Second: Zant	
	Vote: 5-4-0	
	(Graves, Winston, Kennedy, Trumbo voting "no)	
CITY COUNCIL ACTION:	**Required**	**YES**
	☐ Approved	**☐ Denied**
Date: October 6, 2009 (1st reading if recommended)		

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as* ***Rural Area.*** *Rural Areas consist of land in an open or cultivated state or sparsely settled. These areas only have infrastructure and public services to support low-density zoning. They do not have adequate transportation or public services to support urban development patterns at this time. This area encourages conservation and preservation in any development pattern. The Guiding Policies for Rural Areas also discuss that if developed, these areas should encourage alternative development patterns to achieve compatibility with surrounding rural areas.*

This property is also identified as an ***Intended Growth Sector*** *in City Plan 2025. Growth sector areas were initially identified during the City Plan 2025 charette process by citizens as areas with potential for population growth in the future. After the initial data was compiled and growth sectors were identified, additional input and analysis was completed in order to prepare the future land use map. This involved analysis of the actual development potential and public meetings where desired development patterns were analyzed and discussed. The growth sector map was an aid in preparation of the future land use map, which was ultimately adopted by the City Council. This area was identified as a Rural Area.*

FINDINGS:

12.3.4 POTENTIAL ANNEXATION AREAS
The potential annexation areas should be identified by the City using the following criteria:

1. Areas that are already urban in character.

Finding: **The subject property is surrounded on all sides by sparely populated rural residential land uses. This area is not considered urban in character, and has not previously been identified by the City for annexation. The property is within the City's Planning Area.**

2. Areas that can be developed at urban densities.

Finding: **The subject property cannot be developed at urban densities at this time. The roads accessing the property are two-lane unimproved roads and sewer is not in the immediate vicinity (approximately 2,500 feet to the west). Unless significant improvements occur, the property and surrounding area will likely remain in a relatively low density state for some time, until and unless development occurs along**

Crossover Road and moves in an eastern direction.

3. Immediate areas are those that are peninsulas or islands, where municipal services have already been extended.

Finding:

Municipal services that would accommodate future development have not been extended to this area. The proposed annexation would extend a peninsula of property approximately 1,300 feet into the county that is not served by city municipal services. The subject property and surrounding areas do not have adequate water or sewer service. There is an existing four-inch water line available to the subject site on the south side of Old Wire Road, however, the water line would have to be upgraded to provide domestic and fire flow for future development. Sewer service is not available and is located approximately 2,500 feet to the west and would have to be extended to serve development on the site. City police and fire service are provided to areas to the west.

4. Vacant lands that are subject to development pressure.

Finding: **This site has been proposed to be annexed approximately three times since 2005 and a conceptual subdivision layout was proposed then withdrawn in that timeframe. These applications and the developer's communication with staff indicate that this area is under development pressure, though this is certainly questionable at this time, given the reduction in building permits and development projects, and vacant subdivisions in the region. The site is less than one mile from Crossover Road (State Highway 265), which is the major north-south transportation corridor on the east side of Fayetteville, also providing connection to Springdale. The site is relatively cleared of vegetation and flat, and is not in a floodplain, without natural constraints to development.**

5. Areas where urban services are already provided.

Finding: **Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities that could support an urban development at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City. Also see Finding 12.3.5.a, and the attached comments from the Police Department expressing concerns with emergency service provision.**

6. Areas where urban services are needed.

Finding: **As discussed above in Finding No. 5, water, fire, and police service are provided adjacent to the west, however sewer service is unavailable to the subject property and surrounding areas. Sewer service would be needed to serve development on the**

subject property. The subject property and surrounding area are largely undeveloped or rural residential, and do not currently need urban service for existing land uses.

12.3.5 ANNEXATION GUIDING POLICIES

BOUNDARIES

12.3.5.a Annex existing islands and peninsulas and do not annex areas that would create an island or peninsula.

Finding: **Annexation of the property will not create an island of unincorporated property. However, it will extend a peninsula of incorporated City approximately 1,300 feet. Creating a peninsula will extend the area of city property to which utilities and emergency response personnel must travel to benefit the future residents of the City. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. Development in this area would also require the extension of sewer service to an area that is undeveloped or developed at low densities on septic systems. Extending sewer service would encourage leap-frog development of this site and the surrounding areas. Staff finds that this proposal is in direct conflict to the annexation policy direction of the City Council, and can therefore not recommend approval of this annexation.**

Further, this application is in conflict with two of the primary goals of City Plan 2025 including Goal 1, " *We will make appropriate infill and revitalization our highest priorities.*", and Goal 2, " *We will discourage suburban sprawl.*" The proposed annexation on the periphery of the City is not infill and would encourage sprawl, by spreading development across the natural landscape, and if this property is developed, making people solely dependent on the automobile, in conflict with these two goals.

12.3.5.b Proposed annexation area must be adjacent, or contiguous, to city limits.

Finding: **The proposed annexation area is adjacent to the City Limits to the west.**

12.3.5.c Areas should either include or exclude entire subdivisions or neighborhoods, not divide.

Finding: **The subject property is not a part of a platted subdivision.**

12.3.5.d Boundaries for annexed areas should follow natural corridors.

Finding: **Proposed boundaries follow property lines of the existing parcels and right-of-way.**

12.3.5.e The provisions of services should be concurrent with development.

Finding: **Public services will be required to be provided concurrent with development in accordance with Fayetteville Unified Development Code requirements. Currently adequate public services are not available to support an urban or suburban development.**

ENVIRONMENTALLY SENSITIVE AREAS

12.3.5. f Annex environmentally sensitive areas that could be impacted by development and utilize appropriate development regulations to protect those areas.

Finding: **There are no known environmentally sensitive areas that could be impacted by development, however, this site has been designated as a Rural Area on the City's Future Land Use Plan. The guiding policies for Rural Areas encourage conservation and preservation that would allow historical agricultural and related uses to continue to occur.**

EMERGENCY AND PUBLIC SERVICES

12.3.5.g Public services must be able to be provided efficiently in newly annexed areas.

Finding: **Public services are not able to be provided efficiently in the proposed annexation area. The four-inch water line would be required to be upgraded at the time of development and extension of the nearest sewer service is located approximately 2,500 feet west of the property. Response time to this location for emergency personnel is anticipated at four minutes. The Police Department commented that this annexation would result in one side of the road inside the city while the other side is outside the city. This may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency.**

12.3.5.h Annexed areas should receive the same level of service of areas already in the city limits.

Finding: **Fire and police service will be required to be provided to this area with the same level of response and service as other properties in this area, if annexed in the City of Fayetteville. This property is adjacent to rural residential areas to the west already being served by the city.**

12.3.5.i The ability to provide public services should be evaluated in terms of equipment, training of personnel, number of units and response time.

Finding: **These factors were taken into consideration in the responses and recommendations included in this report.**

INFRASTRUCTURE AND UTILITIES

12.3.5.j Areas currently served by utilities and other public services should be annexed.

Finding: **Water, fire and police protection are currently provided in undeveloped areas to the west but not to the density to the proposed RSF-4 in this area. The subject property is not being served by city utilities at this time. The level of service for this property may be reduced in comparison to surrounding subdivisions located in closer proximity to the more densely populated areas of the City.**

12.3.5.k Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety.

Finding: **Annexation and future development of this property will result in an increased demand on the existing infrastructure systems. Improvements to sewer and street systems and installation of fire hydrants would be made necessary by the annexation should additional development occur on the subject property.**

12.3.5.l Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services.

Finding: **The proposed annexation is not part of a phased annexation initiated by the City.**

INTERGOVERNMENTAL RELATIONS

12.3.5.m Promote long-range planning with adjacent jurisdictions.

Finding: **N/A**

12.3.5.n Establish agreements to address regional concerns, such as water, stormwater and sewer.

Finding: **N/A**

ADMINISTRATION OF ANNEXATIONS

12.3.5.o Develop a land use plan for annexation initiated by the city.

Finding: **N/A**

12.3.5.p Designate zoning districts for the property during the annexation process.

Finding: **Annexations are automatically zoned R-A, Residential Agricultural. The property owners request annexation and rezoning of this property to RSF-4, Residential single family - 4 units/acre. Increased density on this property will increase the load on public infrastructure in this area and is significantly**

different than the surrounding density. The timing of development to urban densities in inconsistent with City policies in this area at this time.

12.3.5.q An annexation study should be completed on all annexation proposals.

Finding: **Planning staff has asked the Engineering Division, Fire Department and Police Department to study this annexation request to determine if facilities and services are available to serve this property. Comments from each department have been provided herein.**

12.3.5.r Development proposals require a separate review from the annexation proposals.

Finding: **Development of this property was proposed within the past few years for a single family residential subdivision in the Planning Area, however that application was withdrawn.**

12.3.5.s Residents should be fully informed of annexation activities.

Finding: **Adjoining neighbors have been notified of the annexation request and a public notice sign has been placed on the property advertising that this request will be heard at the Planning Commission meeting.**

12.3.5.t Encourage larger annexations to create acceptable boundaries.

Finding: **Extending the city boundary to the east as proposed will create a peninsula of incorporated land. This is not consistent with the Annexation Policy and may create future problems at the time of development by requiring water, sewer, and street infrastructure upgrades. These upgrades would encourage leap-frog development in an area not suitable for urban or suburban development patterns. Staff does not recommend increasing the size of the proposed annexation by one or two adjacent parcels, but might be supportive of a much larger annexation that would create a more acceptable City boundary.**

12.3.5.u Conduct a fiscal impact assessments on large annexations.

Finding: **No fiscal impact assessment was conducted for this annexation of 39.33 acres.**

The City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

To: Dara Sanders, Andrew Garner, Jeremy Pate, and Jesse Fulcher

From: Mark Stevens

Date: August 26, 2009

Re: ANX 09-3409 and RZN 09-3410 (Broyles / 3231 N. Old Wire Rd, 217)

This development will be protected by Engine 5 located at 2979 North Crossover Road.
It is 1.5 miles from the station with an anticipated response time of 4 minutes to the beginning of the development.
The Fire Department anticipates 34 (22 EMS - 12 Fire/Other) calls for service each year after the development is completed and maximum build-out has occurred. Typically, this type of development usually takes 12 - 18 months, after the development is started, before maximum build-out and the service impact to occur.
The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

At this time there is not a water main near this property of sufficient size for firefighting. The closest fire hydrant is located next to Fire Station 5. Old Wire Road has a 4" PVC main providing water East to Rom Orchard; it is reduced to a 2" PVC line providing water North next to Fincher Lane. A minimum 6" to 8" water main will be required to provide water to fire hydrants for firefighting purposes. Refer to the GIS water system map.

If you have any questions please feel free to contact me.

Captain Mark Stevens
Fayetteville Fire Department

Date 9/01/09

Jeremy Pate
Development Services Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request comments on the proposed ANX 09-3409 and RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD.

This rezoning, when built out, may cause any substantial call volume increase and will definitely have an effect on the traffic congestion in the area. The road is narrow and could be Improvements to the road

I also have some concern about the peninsula this annexation will cause. One side of the road inside the city while the other side of the road is outside the city may cause confusion among officers and residents living in the area as to which law enforcement agency to call in an emergency. There is a similar situation off Skillern Road almost immediately to the south. This small peninsula extends to Rom Orchard road and places one side of the road in the city and one side outside the city.

Sincerely,

Captain William Brown
Fayetteville Police Department

City Engineering Division Comments

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Planner: Andrew Garner

RZN 09-3410: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by TODD JACOBS for property located at 3231 N. OLD WIRE ROAD, NW CORNER OLD WIRE ROAD AND ROM ORCHARD ROAD. The property contains approximately 39.33 acres. The request is to rezone the subject property to RSF-4, RESIDENTIAL SINGLE FAMILY 4 UNITS PER ACRE.

Planner: Andrew Garner

Public water is available to the property. There is a 4" main at on the south side of Old Wire Rd. Public water will need to be upgraded to the property to provide domestic and fire flow for any proposed development.

Sanitary sewer is not available to the site. There is a 18" public main at the intersection of Old Wire Rd. and Crossover about 2500' to the southwest of this property.. Public mains may need to be extended to the property to serve any proposed development.

The site has access to Old Wire Rd. Old Wire Rd. is a two lane paved city street in this location. Street improvements will be evaluated with development submittal.

Standard improvements and requirements for drainage will be required for any development. This property is not affected by the 100-year floodplain.

appian
CENTRE FOR DESIGN
PLANNING | CIVIL ENGINEERING

August 3, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Written Statement - Rezoning of 39.33 acres along Old Wire Road

a. The subject property is located in Intended Growth Sector area by the City Plan 2025. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development (TND) is to be centered." The development team has created a master plan framework in conjunction with the proposed Cambridge traditional neighborhood development that is consistent with land use planning, principles and policies of the 2025 plan. We believe the master plan for the Old Wire area and the TND form of Cambridge match the goals of the City Plan 2025.

b. The property is currently being annexed. Rezoning the property to RSF-4 would be in line with the City of Fayetteville land use policies for an intended growth sector area.

c. Old Wire Road is currently a two-way asphalt paved road with approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. The primary flow of traffic from this development is expected to take Old Wire Road either north to Joyce Boulevard or south to Crossover Road, which is scheduled to be widened to a four-lane boulevard in the near future. At the intersection of Old Wire Road and Crossover Road, Old Wire is currently a three lane road with a turning lane, curb and gutter and shows an efficient level of service for traffic. The intersection of Joyce Boulevard and Old Wire Road to the north is currently a two lane stop sign intersection. There is a low volume of traffic at the intersection of Joyce and Old Wire and it should not prove to be problematic or affect a delay on travel times.

d. The proposed rezoning to RSF-4 will not dramatically increase population density. The widening of Hwy 265 to a four-lane boulevard, the subject property and the neighboring properties to the east will see additional homes and businesses in the near future. The master plan shown in conjunction with this neighborhood will provide a structure of planned growth that will include short blocks, ample parkland, trails, sidewalks, and a mix of uses that will inherently provide amenities for the project – all ideals intended through the City's Plan 2025. There is a recently built sewer pump station to the east very near the proposed connection of water and sewer lines that the development will utilize. A newly remodeled elementary school and a recently-built middle school are located very close to the proposed development. There is also a proposed school site in the 200-acre master plan shown in conjunction with this development.

e. A traditional neighborhood development would not be allowed to occur with a zoning of R-A. Additionally, the subject property has been designated by the City Plan 2025 as an Intended Growth Sector. The 2025 Plan describes Intended Growth Sectors as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." R-A zoning is intended for use by one-acre homes, estate lots, or farmland. The property will be entirely single family to not change the land use in close proximity to the existing neighbors.

Respectfully,

Todd Jacobs
Director of Design

509 West Spring Street, Suite 420 | Fayetteville, Arkansas 72701 | 479.422.1444 Fax 479.422.1450

appian
CENTRE FOR DESIGN
PLANNING | CIVIL ENGINEERING

August 5, 2009

City of Fayetteville
Planning Department
125 West Mountain Street
Fayetteville, AR 72701

RE: Rezoning Application - Written Description - 39.33 acres Old Wire Road

Appian Centre for Design is requesting the rezoning of approximately 39.33 acres located on along Old Wire Road to RSF-4.

a. Currents owners of the property are Hank Broyles (Old Wire Road LLC) and Thomas C. Lee and his wife Barbara Lee.

b. The subject property is located in the City of Fayetteville planned growth area. It will be proposed as a Traditional Neighborhood Development designed in conjunction with a 200-acre Master Plan that will create a framework to accommodate long term growth in northeast Fayetteville. This framework is designed to preserve open space, tree canopy, stream corridors, create trail corridors, and link neighborhoods on the East side of town. The subject property is located in what the City Plan 2025 refers to as an Intended Growth Sector. City Plan 2025 describes them as, "areas where new development in the form of Traditional Neighborhood Development is to be centered." The development team is dedicated to creating a framework for an Old Wire Neighborhood that matches the city's goals.

c. The property will be design as a Traditional Neighborhood Development. The surrounding properties are currently R-A with several single family homes to the south, however, a few hundred feet to the west all properties are RSF-4, with a large parcel to the northwest zoned as RT-12. The proposed development will be entirely single family with large green spaces or fields and small parks to blend in with surrounding pasture. Most lots at the proposed subdivision will be larger than typical TND neighborhood lots at seventy to eighty feet in width to better fit in with the surrounding homes. Architectural style will similar to surrounding homes as future elevations will show.

   Traffic from the proposed subdivision will initially utilize Old Wire Road to the south and east. The subdivision, however, will build the first extension of Bridgewater Lane, which will eventually connect west to Crossover Road. In the associated master plan this extension is proposed as a boulevard section and should connect well with the existing Crossover Road, slated to be widened to a four lane boulevard in 2011, forming a strong street axis for this section of northeast Fayetteville. Old Wire Road is currently a two-way asphalt paved road with no curb and gutter and approximately nine feet lanes. The level of service along this road is good with few delays expected morning or evening. Traffic from the subdivision is expected to be split north to Joyce Street and south to Crossover Road and not overburden the current system.

d. Water and sewer lines are each located at the intersection of Old Wire Road and Skillern Road. The lines will be extended to the property where sewer and water will service homes in accordance with Fayetteville UDC.

Respectfully,

Todd Jacobs
Director of Design

509 West Spring Street, Suite 420 | Fayetteville, Arkansas 72701 | 479.422.1444 Fax 479.422.1450

Correspondence Received
(Letters of Opposition)

Colene Gaston and Roger Montgomery
3270 Rom Orchard Road
Fayetteville, Arkansas 72703

September 9, 2009
Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commissioners:

We live one house back from the eastern boundary of the Old Wire Road property proposed simultaneously for annexation into the City of Fayetteville and for rezoning to Residential Single-Family, Four Units per Acre (RSF-4). We opposed previous requests to rezone and annex the property that were denied by the City. We also opposed the request for a Conditional Use that was denied by Washington County. Nothing has changed since those previous requests to alter our opposition to the proposal currently before the Planning Commission. If anything, we believe that there is now more reason to deny the requested rezoning as there clearly is no need for an RSF-4 subdivision in this area. There already are several subdivisions on Crossover Road and another on Skillern Road that have completed infrastructure but that remain all or mostly vacant lots.

The proposed rezoning would result in an isolated zone of RSF-4 that is surrounded by property zoned for agricultural or residential development with a maximum density of either one-half or one house per acre. In fact, the single family homes in the area generally are on lots of three to ten acres. Several of the properties have livestock or agricultural uses. Some of the acreage is protected from development in perpetuity by conservation easements held by the Ozark Regional Land Trust. Rezoning the subject property to RSF-4 would be incompatible with the surrounding area.

We recognize that Fayetteville will continue to grow and develop. We support infill in the City core and City policies that discourage sprawl. While some may argue that keeping this area rural supports sprawl, we think that's more the case if an RSF-4 development is permitted in the middle of stable, rural properties. We have lived in our house for fourteen years. In that time very few new homes have been built in the area. Most of our neighbors are committed to maintaining the rural character of the neighborhood. It is very unlikely that their properties would be densely developed, even if zoning restrictions were relaxed. In addition to benefitting our neighborhood (and we do think of it as a neighborhood even though it's rural), we believe that it benefits the entire community if some neighborhoods with a more rural character and open space are preserved. This also is in keeping with the City Plan 2025 for the subject property.

As a practical matter, the roads in the area are not adequate to handle development as intensive as four houses per acre. Old Wire Road has a blind curve just to the west of the development when traveling in either direction. There is a second dangerous curve that borders the subject property to the east. Numerous cars have failed to navigate this curve. Traffic

congestion already is significant at the intersections of Old Wire with Skillern Road and with Crossover Road.

We do not feel as strongly about the proposed annexation as we do about the proposed rezoning, so our inclination is to take into account the recommendation of the City's Planning Division before taking a firm position. The report of Planning Division is not yet publicly available. We note, however, that the proposed annexation would create a peninsula of land in the City that juts out into the County. And we do oppose any action that would facilitate or result in higher density development of the subject property.

Thank you for your consideration of these comments.

Sincerely,

Colene Gaston

Colene Gaston

Roger Montgomery

Roger Montgomery

September 1, 2009

TO: Fayetteville Boards of Annexation and Rezoning
RE: Property at Old Wire and Rom Orchard Rd
Request for Annexation and Rezoning

To Whom it May Concern,

As 23 year residents of 3162 Rom Orchard Rd, Washington Co, Arkansas, we would like to publicly express strong disapproval for the proposed zoning and annexation requests for the above-mentioned property. This letter may be read at the September 14 public input meeting as well as copies given to each relevant board member in our absence. We will be out of state during the time of this hearing.

The following list gives some of the reasons that need to be seriously considered before this annexation and rezoning would ever be approved.

1. The character of this area is primarily rural and agricultural. Most landowners have property of three or more acres. The basic integrity of the area should not be altered to include multi-family use of the density requested.

2. The land is a peninsula jutting out into Old Wire Road for a large portion of its total size. Considering only the Old Wire Road lines of vision, either direction is dangerously blind around this peninsula. The entrance into or from Rom Orchard is a similar hazard. The traffic speed is too fast for safe entry and exit with the addition of the high number of vehicles involved in a large subdivision.

3. At the intersection of Skillern and Old Wire Roads, traffic from the west toward Hwy 265 has the right of way at this time. That is yet another very blind corner for those of us traveling toward that intersection. Traffic speed down Skillern is significantly more than would allow for ample yield time.

4. The morning commuting hours already present a difficult traffic issue with the number of cars continually going toward the light at Old Wire and Crossover Roads. It requires significant time to enter that stream of cars when traveling from the areas going north from the stop sign into Old Wire. A traffic count might be feasible to show how the problem we already face would be compounded many times over by adding ANY extra traffic each morning. It could only be dangerous as well as difficult.

5. To avoid the problem just mentioned, traffic from a new development would almost certainly go down Rom Orchard to get to Skillern to go with the unhindered route. Rom Orchard is quiet, SMALL and constructed of the chip and seal material not meant to withstand heavy traffic. Our road would be ruined.

6. The water treatment facility at the Old Wire/Crossover intersection has resulted in many days of unpleasant odors coming all the way to Rom Orchard and beyond. The area has homes serviced with septic tanks and the additional burden on the city sewer system would provide us with even more foul smelling air.

7. Most of us who oppose this high-density project would not object to housing that fits the area's use. Homes no less than one per acre would still be responsible for a traffic burden as well as difficulties in the previously-mentioned areas. It would be far better than the 3 home per acre ideas presented thus far.

Please add our names to the large number of rural residents of the Rom Orchard area who oppose the development of a small house-large population neighborhood in rural Washington County.

Sincerely,

Larry and Tanya Floyd
3162 Rom Orchard Rd
Fayetteville 72703

From: "Shelley Cassar" <shelley@blisscupcakecafe.com>
To: <agarner@ci.fayetteville.ar.us>
CC: "Stephen Cassar" <stephenc@ticketsage.com>, "Shelley Cassar" <shelley@bl...
Date: 9/9/2009 3:58 PM
Subject: Rezoning and annexation at 3231 N. Old Wire Rd

To Whom it May Concern:

We live at 2990 N. Rom Orchard Rd. We moved in to this house last year because of the quiet, country feel of the street and area. We were disturbed to hear talk of a subdivision being placed on the corner of our street. The roads in our neighborhood are very narrow and windy and not at all conducive to heavy traffic flow. Not to mention my children currently use these roads to ride bikes on and walk the dogs. The additional traffic would cause our kids to not be able to enjoy the country atmosphere we moved here for.

We are opposed to the rezoning and annexation at 3231 N. Old Wire Rd. The additional traffic and noise that a subdivision would create would no longer make our current residence desirable. Most of the homes, including ours are on 2plus acres, most being 4plus acres. A subdivision does not fit into this type environment. Please leave some of Fayetteville untouched by yet another subdivision.

Please consider this seriously as it would effect the lives of many families.

Kind Regards,
Shelley and Stephen Cassar

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701
Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;

2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely, I strongly disagree with rezoning request!

Signature Susan Brisiel Address 3150 N. Rom Orchard Rd

Printed Name Susan Brisiel Fayetteville AR 72703

The proposed rezoning is so totally opposite the current community lot homes

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701
Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

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1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;

2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Sharon Payton Address 3845 Bridgewater

Printed Name Sharon Payton Fay. Ar. 72703

Mr. Garner, I strongly oppose this Plan. I feel it will be very detrimental to our neighborhood.

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

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2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers,

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Paul H. Pannell

Printed Name PAUL H. PANNELL

Address 3287 ROM ORCHARD Rd FAYETTEVILLE 72703

ON 3 ACRE W/1-RESIDENCE

MY INPUT: I'd agree to 1 one(1) RESIDENCE PER 1 1/2 ACRE. RHP

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701
Attention: Andrew Garner, Senior Planner: agarner@ci.fayetteville.ar.us

Re: Annexation and Rezoning at 3231 N. Old Wire Road

Dear City of Fayetteville Planning Commission:

It is my understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4).

I oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows four houses per acre, is not compatible with the surrounding area;

2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Terry Payton

Printed Name Terry Payton

Address 3845 Bridgewater Lane
Fayetteville, Ar
72703

From: Susan Brisiel <susan.brisiel@fayar.net>
To: <agarner@ci.fayetteville.ar.us>
Date: 9/9/2009 2:47 PM
Subject: Opposition to proposed rezoning on Old Wire Rd

Mr. Garner,
Please allow me to go on record as strongly opposing the proposed rezoning of property located on Old Wire Rd.
I live on Rom Orchard Rd, a nice quiet rural area with all the homes occupying at least 3 acres. The proposed 4 houses per acre is just totally at odds with the existing setting.
Letters in opposition have been faxed from Susan Brisiel and Sharon Payton.
Thank you for considering these letters in your discussion of the area.
Susan Brisiel

--
Please note email change: susan.brisiel@fayar.net
Susan Brisiel
Admin Asst
Vandergriff Elementary
479.527.3600 office
479.527.3603 fax

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

It is our understanding that Mr. Hank Broyles is requesting annexation of the property located at 3231 North Old Wire Road into the City of Fayetteville and the rezoning of the property to Residential Single-Family, Four Units per Acre (RSF-4). We own 10 acres located at 3284 Rom Orchard Rd., which is adjacent to the subject property to the east, across Old Wire Rd.. Our property is adjacent to the subject property for 895 feet. We have lived at this location since 2000.

We oppose the requested action to the extent that it facilitates or results in higher density development of the property for the following reasons:

1. The proposed change in zoning from Residential-Agricultural (R-A), which allows one house per two acres, to RSF-4, which allows 4 houses per acre, is not compatible with the surrounding area;

2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers, bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, we respectfully request that the proposed action be denied.

Sincerely,

Jeff & India Dangeau
3284 Rom Orchard Rd.
Fayetteville, AR 72702
(479) 521-7416

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

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2. The rezoning to RSF-4 will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood;

3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

4. There is no need for an RSF-4 subdivision in the vicinity; and

5. The rezoning to RSF-4 will be detrimental to public safety.

The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

The rezoning to RSF-4 single family would be detrimental to public safety by greatly increasing the traffic flow on Skillern Road, Old Wire Road, Rom Orchard Road, Bridgewater, and other roads in the vicinity. These roads are frequently used by joggers,

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SEP 14 2009
CITY OF FAYETTEVILLE
PLANNING DIVISION

bicyclers, and horses. Rom Orchard Road is a narrow, winding road that would be particularly hazardous to joggers, bicyclers and horses with increased automobile traffic. There are two dangerous curves in Old Wire Road that wrap around the south and southeast corner of the subject property. Vehicles frequently cross the center line when navigating these tight curves. Approximately once a year, automobiles fail to negotiate the southeast curve and crash through the fence on the west side of Old Wire Road.

For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Roy C Rom

Printed Name ROY C. ROM

Address 3098 ROM ORCHARD RD 72703
FAYETTEVILLE

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

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The surrounding area is a mixture of residential and agricultural uses, with residential lots being generally three to five acres or more. A higher density subdivision, such as the one that would result from the rezoning, is clearly incompatible with the surrounding area and with City Plan 2025. It will also decrease the value of the larger lots in the area and be injurious to the normal use and enjoyment of these lots. There is no need for an RSF-4 subdivision in this area as there already are several nearby subdivisions with completed infrastructure on Skillern Road and on Crossover Road that remain all or mostly vacant lots.

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For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature L Floyd Tanya Floyd

Printed Name Larry Floyd Tanya Floyd

Address 3162 Rom Orchard Rd

September 9, 2009

City of Fayetteville Planning Commission
125 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning and Annexation at 3231 N. Old Wire Road

Dear Planning Commission:

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3. The rezoning to RSF-4 is incompatible with City Plan 2025, which designates the property as a Rural Area with infrastructure and public services adequate to support only low density zoning;

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For these reasons, I respectfully request that the requested action be denied.

Sincerely,

Signature Valerie E Fletcher

Printed Name VALERIE E. FLETCHER

Address 3281 Rom ORCHARD RD, FAYETTEVILLE, AR 72703

Planning Commission Minutes

October 10, 2005 (ANX Denied)
May 08, 2006 (ANX Denied)
September 14, 2009 (ANX Denied)

ANX 05-1626: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at THE NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is in the Planning Area and contains approximately 29.70 acres. The request is to annex the subject property into the City of Fayetteville. Planner: ANDREW GARNER

RZN 05-1627: (OLD WIRE INVESTORS, LLC, 217): Submitted by FRIDAY, ELDREDGE & CLARK LLP for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROADS. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 34.51 acres. The request is to rezone the subject property to RSF-4, Residential Single Family, 4 units per acre.

Ostner: Our next item is another annexation for Old Wire Investors, ANX 05-1626.

Garner: These items, fifteen and sixteen on the agenda are also tandem items for an annexation and a rezoning. The property contains four parcels consisting of approximately 30 acres to be annexed and the applicant is also seeking to rezone approximately 35 acres which includes 5 acres located in the city currently and zoned R-A. The site is located northwest of the intersection of Old Wire Road and Rom Orchard Road. It is surrounded by rural residential and undeveloped pasture with unincorporated Washington County to the north, east and south and property that is zoned R-A and the City of Fayetteville to the west. There is also unincorporated areas of Washington County to the west of some of the property line. Staff has received public comment from adjacent property owners objecting to this annexation and rezoning and has discussed this with the applicant. The applicant has indicated that they have discussed this request with the surrounding property owners and haven't been able to gain support for the annexation and rezoning. Staff finds that annexation of the property will not create an island of unincorporated property but it will extend a peninsula with irregular property lines that contain some out parcels between the proposed annexation area and the city limits. We find that expanding the city limits in this configuration is not in compliance with the policies for annexation and would create undesirable boundaries and problems with creating a peninsula in this manner with regard to extending public services across county and into city boundaries and will create gaps of unincorporated property almost entirely surrounded by city limits. The site is currently utilized for rural residential uses and undeveloped pasture and the applicant anticipates subdividing the property for single family use and proposing a density of four units per acre. Staff finds that this proposed zoning is not compatible with adjacent and nearby agricultural and rural residential uses. The General Plan does designate this area for residential

land uses. However, this designation doesn't specify the density levels. Staff and the Planning Commission and City Council is charged with evaluating the surrounding land uses and this proposal's compatibility with these units. Staff finds that the proposed density is not consistent with density and surrounding zonings and existing land uses currently in this area. Engineering, Fire and Police Departments analyzed this proposed annexation and rezoning request and the Police Department found that the proposed annexation and rezoning would not substantially increase the load on police services. The Fire Department noted an adequate response time of seven minutes as well. The Engineering Division found that public water is adjacent to the site and sanitary sewer is not adjacent to the site with the nearest sewer main being approximately 2,500 feet to the west of this property and an off site sewer main extension would be required to serve the development. In summary, we find that the proposed configuration of this annexation would create an undesirable boundary and would create an undesirable peninsula and we find that rezoning is not compatible with the surrounding area. With that, we are recommending denial of both items.

Earnest: I'm Hugh Earnest representing Old Wire Investors. We find ourselves on the horns of a dilemma tonight. About a month ago after careful consideration of this annexation request with staff we pulled the item from the agenda and have attempted to contact a large number of people generally bounded by Rom Orchard Road. There is a hatched area where we sent out letters to 28 different individuals asking for their support of annexation, the request was not for the land that Old Wire Investors owns but rather, for the property adjacent. What we attempted to do to meet what I believe is a legitimate concern of staff is to bring in something that is larger. However, we were unable to secure unanimous support from those individuals so we have gone back and are now bringing forward to you the original annexation request that we had earlier voluntarily pulled from the agenda in order to try to meet the objections of staff and bring forward a larger piece. Let me also make the point, five acres of the area is already inside the city. This is adjacent, it is a peninsula, the developer is willing to install the 2,500 foot sewer line to the property and the water line also to the property in response to the information that we just received from Colleen Gaston, in the many conversations that I have had with David Jurgens there has never been concern about capacity short fall in this particular part of town with respect to the capacity of the plant. Such is not the case, as you well know, in west Fayetteville. In this particular case there has never been any concern expressed on that. As recently as this morning I had a conversation with Mr. Jurgens because he is a good planner and he was talking about how he would need to wrap the 4" line down Rom Orchard Road to get water pressure into the area. Mr. Jurgens, from his perspective, is certainly thinking about the necessary infrastructure improvements that the area would require for adequate

water in that particular area. The bottom line, and the developers should be commended, Mr. Spradling, as a developer of record, is here with me tonight, the density that is proposed is slightly in excess of two units per acre. That has already been turned into the city. That discussion has already occurred with city staff. The questions that Mrs. Allen continues to ask are valid questions about fire stations. In my time with the city we certainly were aware of the issues in that area. I commend the city for moving forward aggressively and deciding to put Fire Station #5 at the corner of Old Wire Road and Crossover is their first priority. I suspect that since the city has a template for building fire stations that the station will be done well in advance of the development of this area and I think that probably occurs for the other developers in this area because the template that was used in west Fayetteville I'm sure will be essentially the one that is used in this area. I doubt that there is going to be significant changes in the design. I think that pretty much covers the points that we wanted to make and we are certainly respective to answer any concerns that you may have with respect to this joint request for annexation and rezoning.

Ostner: At this point I will open it up for public comment if anyone would like to speak to this request please introduce yourself and give us your comments.

Parnell: I'm Paul Parnell, I seem to be the one right in the middle of this proposition. I don't necessarily object to the proposition. However, I feel that whoever is gaining from this transaction should defray any costs that we may have in connecting our residences to the sewer that may be established. We presently have perfectly good septic tanks and lateral fields that is not costing us anything to operate and we feel that we should be compensated by whomever is gaining from this endeavor because we don't consider ourselves gaining from this activity. We are very happy with what we have got. However, we are not opposed to developments and appreciate those things. However, fire protection, as just mentioned, is something that should be addressed at this time because we, at this particular month of October are to reconsider our contract with Goshen who has been providing us fire protection for many years. We need to have that addressed. In the event that we are annexed into the city, when does the city assume responsibility for fire protection for this area? Those are things that we feel are very important. Thank you very much. I live at 3287 Rom Orchard Road.

Floyd: My name is Larry Floyd, my wife and I live at 3162 Rom Orchard Road and I didn't get a letter about it but I saw the sign in the field and fixed it up there so everybody could see it and proceeded to see what was going on. The letter that you mentioned earlier is the letter from Colleen Gaston but she really said what we are saying in the neighborhood. I have a number of people here who are opposed to this and who agree with staff

on the recommendation that they made. She was unable to attend but she wrote this letter and she basically says that she is opposed to both annexation and rezoning. They are my neighbors on Rom Orchard Road. She talks about the wastewater treatment plant down at Old Wire and Crossover and the smell is unbelievable. Even when you are in your car with the windows up when you guy by there you can smell what is taking place down there. She says that there have been a number of actions to attempt to address this but it still persists. While there may be a need for additional housing in Fayetteville the question of adequate capacity may apply to development within the existing city limits and it does not seem prudent at this time to expand the land area to which the city must provide sewer service. The proposed rezoning is out of character with our neighborhood. If you have been out on Rom Orchard Road it is the greatest area in Washington County. It is agricultural. There are four of the neighbors that have large horses. I have a miniature horse farm on that road. There is an apple orchard, people stroll up and down it like you are back in the 50's and pick an apple and eat it on the way home. It is unbelievable, it is like going to the Apple Festival every day. It is just a wonderful area. There are people walking their dogs and their horses and everything else along there. Traffic is a big concern for us as well. The character of our neighborhood is 3-10 acre lots and a lot of it is livestock and agricultural use. The other thing, I mentioned the traffic, the blind curves at Old Wire Road, there are a couple of them. People frequently go off of that curve right by this development into the neighbor's fence. Their fence is being fixed all the time because of the traffic there. It is very dangerous. I'm concerned with the stop sign that was placed at Old Wire Road.

??: The tax base unless you are farming it forces you to do something or sell out and you need to take those things into consideration. I happen to farm my five acres and I'm making enough money that it is considered a farm by USDA standards. If I'm taken into the city I plan to try to stay agricultural because I plan to continue farming. I grow vegetables, my wife sells at farmers market. We are pleased with that and we are pleased with where we live. I don't have a great concern about this particular proposal here tonight but I do think that we are sticking our head in the sand when we oppose development because it is going to increase traffic. The main traffic on Old Wire Road is about 200 gravel trucks a day now. We are in between the gravel pit off of 412 and the asphalt pit in Springdale. You people have a difficult job and I appreciate your time. I didn't plan to talk tonight but I wanted you to know that not everybody is opposed to this annexation across the street from me.

Ostner: Is there any further public comment? We will come back to the applicant.

Dangio: My name is Jeff Dangio, I live at 3284 Rom Orchard Road. I am the guy with the cars going through the fence. We own a 10 acre tract directly east of the subject property and have a wood rail fence around it. There is a sharp curve to the north at the intersection of Rom Orchard Road and Old Wire. I guess more than once a year we have a vehicle come crashing through that fence. If we add a high density development in there you automatically increase the traffic. There is a safety concern that is kind of unique to our property. A lower density development would be better but if you do go with this proposal we would ask that you do something to improve the safety of that curve in some way. The good thing about the cars crashing through the fence is I may never have to pay to replace that fence. The insurance companies pay for a significant portion of it every year. The down side is if there are kids around and they happen to be at the wrong place at the wrong time we could have a bad situation. Thank you for your time.

Payton: My name is Terry Payton and I live on Bridgewater Lane about 600 yards east of the development. I just want to address the traffic concerns and make a couple of points that have not been made. In that section of Fayetteville the traffic from the east funnels to Crossover Road, you either go to Old Wire and Crossover or the Joyce and Crossover intersection. My main concern is the density that is being proposed. Tonight you approved the five acre subdivision that will be on Skillern Road from 11 up to 20. Bridgewater Estates has 22 or 24 lots and all of those lots have sold. There are only three houses there now. That is going to increase the traffic load and then if this subdivision goes in it will further increase by however many homes will end up there. The next time that you are out there and you see the Joyce Street Crossover intersection and the Old Wire Crossover intersection, both of those are backed up in the morning. That is my main point.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater, just east of this development. I don't know much about zoning law. I don't care whether this area is annexed to the city or not, I don't have an objection to it being annexed to the city because I understand that that would give the city more authority to regulate it. I do have a big problem with the zoning. It is totally inconsistent with the lots in that area. The land that Terry and I live on and some of the other people, that started out as a 40 acre tract, and Mr. Stevenson sold it off and in the covenants, private covenants, there can't be any lots sold that are less than five acres. I live on 7 ½ and Terry lives on 8, there are a couple of 10 acre tracts and a 5 acre tract. These are all totally inconsistent with allowing four houses per acre. That is not just true of that land, it is also true of the other houses in there, I would guess that they are all one to five acre lots. To allow four houses on one acre is totally inconsistent with what is out there now. I don't care about the annexing but I do have a big problem with the zoning change. Thank you.

Ostner: If there is no further comment from the public I will close the public comment session and bring it back to the Commission.

Spradling: My name is Marcus Spradling, I am the developer. A couple of things that I ran into on the annexation was the majority of the people I talked to did not want to annex until they saw the sewer and water improvements, which is the same issue you get into with building a fire station or a Wal-Mart Super center where nobody lives, you don't do it. The people come and you bring the infrastructure to them. What we are trying to do is provide infrastructure to the area for water and sewer which eventually will lead to better fire protection for the people out there. You've got Fire Station #5 which is basically ready to go and should be built before we ever get there. The zoning, you have got one unit per acre or you've got four units per acre. There is no middle ground, there is no in between. We have handed in all of the Preliminary Plat information showing that we are just a little bit over two units per acre because we felt like that is what best fit in the neighborhood. We weren't going in there trying to put 65' wide lots with little houses in there and drop it in the middle of that market. It is an upscale subdivision and the houses that will be built in there are in the same area and the same price ranges as what is built out there now so the property values should increase. Our intent is not to devalue the property, it is to increase the value of the property. We are providing the water and sewer extension which will in turn allow people to tie into it. I don't know what other questions you may have. Anything we haven't covered?

Pate: I just want to call your attention to page 13, the citizens that did speak, numbers five, six, 13, 14 and 15 did speak tonight, just so you have an idea of where they were coming from.

Vaught: I guess my problem is as we were speaking of earlier, where the other one was a logical shape and extension, this one seems illogical to me with the chunks missing, the spur out and this one creates more of a peninsula hanging out there by itself. I know Mr. Earnest spoke to bringing a larger tract forward, can you repeat what you said?

Earnest: What we attempted to do at the request of staff, was to bring forward a larger more together area, if you will. There is a map in there that shows a hatched area bounded by Rom Orchard Road going back to the city limits. The hatched area shows the 28 property owners that we sent letters to. The majority of those individuals are in favor of annexation, but not all. One of the burdens that we have is unanimity is required for annexation. I understand that and support it, but that is an effort that we made to accommodate the criticisms that this does not cover a larger area.

Vaught: It just makes it hard for us and staff to support something like this.

Spradling: It is not that we have singled out a piece of property out in the middle of nowhere. 25% of this property is already in the city. We are trying to extend what we have in the city. We are already in the city, we are just trying to incorporate the balance of the property into the city. With us putting in the infrastructure the majority of the people that I talked to will come in but they are not going to allow their taxes to be raised and not get any benefits. They aren't buying in to raise my taxes and when you get ready to bring me sewer. They can't get it unless we bring it in there, and they are not willing to do something without seeing that they can tie onto it first. That is where the consumer is today.

Vaught: My concern is looking at the guiding policies, I counted six out of fifteen that this directly conflicts with. There is a peninsula issue, areas that exclude entire subdivision or neighborhoods or divide areas up, boundaries for annexation follow natural corridors. It doesn't follow natural corridors because there are bits and pieces here and there. You've got a couple of pieces of county that are kind of stuck out there in the middle of the city. It doesn't create islands but it comes close. Areas that are currently served by public services should be annexed. This is a 2,500 foot extension of sewer main, that is a pretty good chunk of sewer main to extend.

Spradling: That is because it follows the road. As a crow flies we are 1,320 feet from RSF-4.

Vaught: As for the engineering, I don't know if any additional lift stations would have to be constructed. I assume the one at the corner of Crossover and Old Wire would suffice?

O'Neal: That one is a substantial lift station, I believe it is a 24" forced main. There is not a capacity issue at that station at this time.

Vaught: While we are on it, can you address the smell of that lift station?

O'Neal: Due to the time that the sewer is retained in the station it smells bad. There are a lot of other items that can be done with lift stations, that is something that we can look at.

Pate: A lot of times when a lift station is large and a forced main is large and is not 50% or closer to capacity it sits there for a longer amount of time so that is why the smell is produced.

Vaught: So more development would help it. My main issue is about the annexation. I know that we are stuck in that spot where it is really

difficult but it is leaving a lot of gaps and holes in there and it is an area with a lot of development. Typically something like this I would be in support of but this one I'm having a hard time with those boundaries and how you are tying together. I know you are having a hard time with the neighbors and it is a chicken and egg kind of situation, but even if you run the sewer main down that line, they are not automatically connected, they are going to have a substantial expense to connect to it. We are not guaranteeing those people will even connect to it.

Spradling: No, but they will have the ability to connect to it and it increases their property values because now they have access to sewer that they didn't have before.

Vaught: Correct. You think that those people are going to come in and increase this area. That is what I am having trouble with.

Spradling: The consumer is just not willing to bet on the come. They want to see the baby.

Graves: I have the same concerns. If it was one of the guiding policies or two of the guiding policies it would be one thing because they are guiding policies and they are things, that as I said earlier, we use our common sense on. This one conflicts with a number of the guiding policies and just as I said the first one I didn't think was a peninsula, this looks like a peninsula to me. It looks much like the tail that is on the one mile map which is in the city, but I didn't vote for anything like that. This is a peninsula without question, it is long and oddly shaped and doesn't create nice boundaries for the city, it doesn't follow natural corridors and is not an area that is easily serviced in any way and these are some longer response times than what we saw with earlier items as well and I cannot support annexing this property the way it looks right now.

Spradling: I think the long response time was an issue and that is why the city is building a brand new fire station right next to it. Obviously, they know something that we may not know. They have headed off that problem and they are planning on the expansion being on the east side of town.

Graves: I'm not looking to argue with the applicant, I'm discussing with my fellow commissioners this item. If the chair recognizes the applicant, that is fine. I'm not looking to have an argument back and forth, I'm just making my comments to my fellow commissioners.

Spradling: I respect that, thank you.

Clark: The only reason I would be in favor of annexation is we can control how it develops. I'm not in favor of rezoning at all. If we annex it I will vote to

let it sit just like it is. Step systems scare me. Development within the county close to our borders scares me. That puts us on a horn, what do we do? I don't think it is bad to annex it but I think it would be very, very bad to rezone it. I am seeing a very eager developer so I'm more inclined to annex it.

Ostner: Just as a procedural issue, most developers withdraw their annexation requests if their rezonings are denied since they simply don't want to pay more taxes on land that they can't develop. Are there any motions?

Myres: I will make a motion that we deny ANX 05-1626 as recommended by staff.

Graves: I will second.

Ostner: Is there further discussion?

Vaught: My issue is mainly the boundaries and the way that this is drawn up and the gaps that it creates. I agree with staff's findings that we need a more logical boundary to create this annexation. It is an area of development, typically I would like to see this property annexed, because, like you said, there is a fire station coming in here. The way that this is coming in to me is not correct. We don't know when the stuff around it is going to come in. I would like to see a bigger picture in this and that is why I will be voting against it. Not because I don't think this is a right piece, but it just causes too many conflicts.

Ostner: Is there further discussion? Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to deny ANX 05-1626 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Ostner: Mr. Williams, is the same procedure in place to appeal our recommendation?

Williams: That is correct. At this point the petitioner would need to decide whether they want to withdraw the rezoning petition at this point in time or have that acted upon tonight also? You could ask to table the rezoning if you wanted to think about it or you could go ahead and ask for action to go forward.

Earnest: I think it is obvious that we will ask for it to be tabled.

Ostner: The applicant has requested the next item to be tabled. That is RZN 05-1627.

Clark: So moved.

Myres: Second.

Ostner: Would the applicant like to share anything before we vote? Would anyone from the public like to share anything on the rezoning request before we table it? I will close the public comment session and bring it back to the Commission. Will you call the roll please?

Roll Call: Upon the completion of roll call the motion to table RZN 05-1627 was approved by a vote of 8-0-0.

Thomas: The motion carries.

Announcements

Subdivision Committee Appointment: Commissioner Trumbo to take Commissioner Graves' seat.

Meeting adjourned: 8:45 p.m.

ANX 06-2046: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 30.70 acres. The request is to annex the subject property into the City of Fayetteville.

RZN 06-2047: (OLD WIRE INVESTORS, 217): Submitted by RAYMOND SMITH for property located at NW INTERSECTION OF OLD WIRE AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 35.51 acres. The request is to rezone the subject property to RSF-4, Residential Single-Family, 4 units per acre.

Garner: This property is located at the northwest intersection of Old Wire and Rom Orchard Road east of Fayetteville. I will summarize both the annexation and rezoning together and we can answer any specific questions you might have. Subject annexation property was included in an annexation request that came before the Planning Commission on October 2005. Staff recommended denial of the request at that time and annexation was denied unanimously. The applicants included an additional property owner and one acre parcel on the north side of Old Wire Road in the current request for annexation and rezoning. Additional background, in March 2006 the applicant submitted a preliminary plat to the City of Fayetteville for a subdivision with 77 residential single-family lots. This subdivision has been tabled until the type of sewer service can be determined. The property that can be annexed contains five parcels consisting of 31 acres. The rezoning application contains approximately 5 acre parcel as well as that within the city limits. There is a difference in the acres between the annexation and rezoning. The applicant proposes annexation of 31.00 acres into the city and rezone the property if it were annexed from Residential-Agricultural to RSF-4, Residential Single-Family, 4 units per acre. The current site has access to Old Wire Road. The site has water available and sanitary sewer is not adjacent to the site. The nearest sewer main is approximately 2,500' west of the site on Old Wire Road. The fire and police department responded, and did not have any adverse effects on their services noted. Other than that they did acknowledge that it would be a change in the population density in this area. Staff finds annexation of this property would be in contrast to the city's policy not to annex islands or peninsulas. Finding that the configuration of these parcels would create a peninsula that would be undesirable and would have potential to have city services extended to areas where it would provide some potential service problems. Staff has discussed with the applicant that we would be more in support of this request if they were able to get the support of some of the adjacent property owners and provide a more continuous parcel to be annexed in and rezoned. As far as response, they have been unsuccessful in obtaining support from neighbors. Staff finds that this annexation and rezoning in general would not be compatible with

this area. It is largely agricultural, rural residential at this time. The density proposed, 4 units per acre, would not be compatible with these land uses. The closest subdivision is west of Crossover Road or south of Skillern Road. Those are the main reasons why we recommend denial and we would be happy to answer any questions you might have.

Anthes: Would any member of the public would like to address either the annexation or rezoning for Old Wire Investors.

Gaston: Hello, my name is Colleen Gaston at 3270 Rom Orchard Road, which is one of the connector streets to this proposed subdivision. I definitely oppose the proposed rezoning. If you have looked at any of the attached maps to the staff report, you will see surrounding on all sides of this proposed annexation and rezoning land, the houses are on tracts of minimum 2 acres. More often, 3,4,5,6, and 10 acres. This falls completely out of character with this surrounding area. I'm not clear on the staff report on the traffic issue, exactly on what is being said. I guess there is a letter from the police department from Captain William Brown. It stated that the proposal would have negligible impact on the cost from police services and traffic congestion for the area. Elsewhere in the report, it talked about increasing the density of traffic from approximately 170 vehicles per day to 1,380 vehicle trips per day. To me this is not just a negligible increase, particularly at certain times of the day. The intersection of Old Wire and Crossover, at morning rush hour and evening, has traffic backed up at least a mile on Crossover. This will clearly add to that traffic problem, not to mention the fact that there are several blind curves associated with this project. I do, however, have mixed feelings about the annexation. Some of my neighbors share those same concerns. If there is going to be development in this area, and we all know there is going to be more development, we would like to see it on a sewer system. We think that it would be better for the city and those of us in the area. If this was developed with sewer as opposed to septic, if you're looking at 80 houses on 35 acres. Its sort of a catch twenty-two, I understand the staff recommendation for why they oppose the annexation. At the same time, I think there is some value to the city having property come in with sewer. Although, not as densely as proposed. The idea about this would be if this was annexed in as R-A, but allowed to have sewer. I think those are the main points. This did come up before the Planning Commission in October and I know that many of you were here at that time and heard a number of the neighbors talk about how this proposal was not in keeping with the area. This is an area that is going to be developed with a lot of subdivisions. The surrounding properties are pretty stable and are going to stay with very low density housing on it. This would be an island of very dense development and for that reason, I think I support the staff's recommendation that this not be rezoned RSF-4.

Anthes: Thank you Mrs. Gaston, would any other member of the public like to address this item? Seeing none, I will close the public comment section. Oh, in the back.

Elliot: My name is Don Elliot, I live at 3743 Bridgewater and I've spoken here once before, so I don't really want to repeat what I've already said. But I would like to join in with Mrs. Gaston said. The report from the senior planner states, this use is not compatible with adjacent land use or density in the surrounding area. We had to sell a 40 acre tract that had its own covenants and no lots less than 5 acres. That's the 40 acres just across the street, just east of this land. While there are closer houses nearby that are less than 5 acres, they are not even close to this dense. I don't know if you have looked at the traffic, but I've talked with Perry Franklin about this, who I think does a great job. If you are traveling west on Old Wire Road at Crossover, you will sit thru three lights minimum between 7:30am to 8:15 in the morning. Coming back, going east on Old Wire Road and Crossover, I was just there last week sitting there at 6'oclock sitting thru three lights. I don't know how much you look at the traffic, but the traffic at that intersection at those times of day, going those directions, is horrendous. I don't see what you would do, you would have to change the road out there. If you put in 77 units and expect them to get to work on time and get home at a decent hour. Anyway, this project is just not compatible in that area.

Anthes: Anyone else would like to speak on this item? Seeing none, I'll go ahead and close the public comment section and ask for the applicant's presentation.

Sloan: I'm Charlie Sloan, representing the applicant. I'm a developer in Fayetteville, as you know. I do not have any investment or interest in this project. This project came through back in October at a time that I brought a project through. There were three of us, Mark Spradlin, Tim Estes, and myself. The first project that came through was Skillern Drive behind Savanna. It created a peninsula; it stuck out. It wasn't as big as this one. But, then again, it did get passed. My project, second, I was surrounded on three sides by the City of Fayetteville, I was annexed in. Sitting outside, talking to my engineer afterwards, we found out that this project was denied on the annexation. Later on, I read in the paper where this had gone to the county and had taken a conceptual plat only, to the county. It was not a plat to be approved, but it had gone to the county. They did seem to like it, it was in the paper. They acted like they would develop this property. The problem is to me as a private citizen on this, is if there is a project going to happen out there, sewer is available to this property. I've contacted the developers, I didn't know them, but said why not run sewer out there. They said that they would be willing to go back

and run sewer, at least a couple 1000 feet of sewer. We are out the same amount of money whether we put this on the step system or we put it on a sewer system in the City of Fayetteville. That's the issue that got me involved. One of these days, this area will be annexed in out there and the citizens of Fayetteville will be paying for sewer out there. My problem is, why not let private dollars pay for something that will be a public utility, plus they will have to upgrade the sewer water system, if they put the subdivision in. There is a 4 inch water line going out there, they will be putting in an 8, the City will probably want to upgrade that. It will cost-share you to 12. So, those are the issues that got me involved in this, it's strictly not knowing the issues about the compatibility, the rezoning, or the lay out of the subdivision. Five acres of their property is already in the City. The rest of it, they are asking to come in. The big issue, I saw, was whether this comes into the city as an annexation or not, or if this plan is approved on the rezoning. Tell these people what the process is to go forward, to let them spend private dollars to take sewer out to this area, that I've felt like would eventually benefit everybody in that area. Some of the homes though developed on 5 acre lots, have covenants that will not allow them to ever break it down and develop smaller lots out there. Do you have a need for sewer? I don't know. Obviously, if there is a septic system working fine, it's working fine. I just hate to see a subdivision put on a step system that could be put on City sewer, even though it is a big expense to these people. This is a chance for us to let private dollars pay for it. That's the reason I ask to bring this forward, and try one more time. Ask if that is possible or maybe this is not the mechanism to go with it. Maybe they will get approved by the County and then come back in and request to be put on the City sewer system, which is fine with them. 122 lots, I believe is what the calculations are for 4 units per acre. They were proposing around 82-83 lots on their latest thing. We did talk with one of the neighbors for them, that I happen to know. They agreed to sale the one acre lot that was carved out of this, so it really made this an odd shape piece of property. It still creates a peninsula. We talked with the two other land owners, and they request not to come in. Cooper runs a business, landscaping business and he wishes at this time not to be in. He had a letter signed for me and his wife said he lost it. He didn't have it with him the other day when I chased him down. He did say that he did not wish, at this time, to come into the City of Fayetteville, because he is running a landscaping business. That is my two cents.

Clark: I have been told millions of times that not creating a peninsula is just a guideline. So, I'm asking for more clarification. If it's just a guideline, and 5 acres is already in the City, what is staff's rationale that the rest of the utilities are not available? What's unique about this one?

Pate: With any annexation request, we look at all those guidelines and polices. If we feel it does not create a dangerous situation or there is some reason that, for instance, a request creates an island and we recommend it, the applicant has gone through every possible means to acquire that property or have that property come in. It's something we will evaluate each and every one of them on their own merit with every single request. The City Council has obviously gone against our recommendation, even recently with an annexation request in northwest Fayetteville. This particular request came before us 6-8 months ago, with very little difference. With the exception of the one acre lot, as Mr. Sloan mentioned. We made a recommendation last summer for the applicant to look at properties, look at page 16 and 20, south of this down to Skillern Road. The property owner, that you mention - Mr. Lee, of course did not what to come in, which is a large notch of his property, in an effort to support this application. That has not been able to be done, for whatever reason. Those property owners do not wish to come into the city limits and staff does not feel this particular request was warranted or meet our guiding policies at this time. With regard to the other utilities as part of our finding, are utilities readily available? No. A sewer line is 2500 feet away. The development of this property would be unique with the surrounding properties. As staff mentioned earlier, the closest property developed as RSF-4 is west of Crossover, as you can see on the same page, or south of Skillern. Those properties are developed more around 2 or 2 ½ units per acre. They are rather large lots in the area, even though you can see that they are much smaller than what's surrounding in the County. It was our rationale that it did not meet guiding policies for City Council and annexation.

Graves: I have a question for staff as well. I'm testing my memory, I remember as Mr. Sloan does, that we saw several of these on one night and that I can see the Skillern Road on our one mile map here. I remember that we approved that one that night and didn't approve the other one. Partly based on staff recommendations, I believe, that staff recommended the one on Skillern Road for some reason. I don't remember what that was at this point.

Pate: The one on Skillern Road was contiguous to an existing adjacent single family residential subdivision. If you look at that property, which those that were not here don't have the benefit of knowing, if you were on Skillern Road and how Natchez Trace curves around, it's directly to the east of that. It is a small potion of property, about 5 acres, I believe. It is much less and does not extend the city limits any further east of those properties surround that. There is an obvious peninsula zoned R-A [to the north] and within a conservation easement and that is not to be developed. That was annexed a number of years ago. The rest of the property is there,

you see, with the addition of the property just east of Township, which was just annexed in as well. This particular case, the city limit line from Skillern goes directly north without variation until you get quite a ways north and we felt it would not meet our guiding policies for this particular recommendation. As you mentioned, Planning Commission at that time, voted against the request to annex that property. We have found that nothing has changed since that particular request to warrant a recommendation.

Anthes: Any further discussion on the annexation request? A motion?

Clark: I'm kind of at a crossroads because I respect staff recommendations but I also know that with annexation comes development rights for the city. In other words, if somebody's going to develop this and put on a step system, since there is no zoning in the County, they can do that. I'd like some input from my fellow commissioners regarding annexing something that would go ahead and develop and not with a RSF-4 rezoning request. If you think it's too dense, there is no transition... I think its totally out of the norm for this area, but I'm not so sure that annexation is not a wise choice. Opposed to high density and septic system, so I'm interested on the feed back from the commissioners.

Graves: I tend to agree; I don't see anything that's changed from when we saw this in October. We did vote it down last time. By the same token, I understand and appreciate that this could develop that similar density to what's proposed on a step system, if it stays in the county. So, from that stand point, I can see its justification for annexing as requested. I know the density proposed is not appropriate against what's already out there. So, I would not be in favor of RSF-4 on the rezoning request.

Anthes: It seems we have this conversation every time we're looking at one of these rezoning and that is, sort of the threat of development without city streets sections, sewer systems, water sewer, etc...What I have never quite been clear about is whether this body is actually suppose to weigh the threat of what we do as a substandard infrastructure, when we are evaluating an annexation request.

Pate: Really, you should look at it as findings, and part of that are infrastructure and utilities. The findings that are listed there, areas currently served by utilities and other public services should be annexed. Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. Phased annexation should be initiated by the City within active annexation areas based on planned service extensions or availability of services. One of those is in the paper right now. I don't believe those services are currently

in this location. The threat of development is before us with every single annexation request we have anymore. There is always a potential to develop something that does not meet these standards. I think that's something that Commission and Council, ultimately the policy making body, has to take in consideration every time they vote on an annexation request.

Graves: I don't believe that this applicant has made a quote threat. I think we've heard some covert comments along those lines from other applicants before. This applicant would prefer be in the City or they wouldn't be here a second time asking to come into the City. They could have gone before us with a step system or whatever, before now, if they wanted to do that. My comment, I used the word threat, but I didn't mean threat by the applicant. I just meant along the lines of the City attaching some more rights on development oversight when it comes in. It's true on all annexations. This one is within shouting distance of existing city boundaries.

Williams: I certainly agree with Jeremy Pate on his analysis of annexation, but I would like to say that annexation is one of those issues where you have - especially City Council - has administrative discretion. The basic question is; do you want this property inside the city? I sure the guide lines will help you make the decision but it no small decision that you make on that level. You can recommend to the City Council an annexation even if maybe wouldn't meet all of the guidelines that we have for the 2020 or 2025 Plan. This is one place where you have tremendous amount of discretion. I just wanted to tell you that, because sometime you don't have any discretion, so this time you have a lot of discretion.

Anthes: Any further discussion?

Ostner: This is complicated and I'm glad I don't have to make the decision. I'm just going to recommend something to the others to make the discussion. The part two that Jeremy read us, 11.6.k: Proposed annexation areas should not require the upgrading of utilities to meet the demands of development unless there is a threat to public safety. To me, that is a one of the statements that I can use. The property that we are considering is a long distance from sewer. 2,500 feet is a long way to go. Sewer mains are expensive and I think that is important. That changes things, the area adjacent to this is in the City, but is not served by sewer to that extent. I'm not sure I'm in favor of this annexation. I'm certainly against the RSF-4, I would see RSF-1 or even R.5 to be possible zoning district if the Council saw to annex this area. I'm not sure either, but I'll be inclined to be against the annexation.

Clark: The sewer was 500 ft?

Anthes: It is showing 2,500 ft.

Clark: Where is the sewer?

Sloan: Somewhere out there....laughter...He is not asking the City for the money, the developer is spending that money himself. They are willing to do that, to bring the sewer to them. They will be paying for that 2,500 ft to have the sewer come to them. It's not something the City would deliver to them, nor would water lines would be on them. All those expenses would be on them. I'm just saying, it's more than a wash for them. They probably will spend more money bringing sewer to them, than they would be putting a step system in. That's all I'm saying, I had a problem to see this go to a step system. Let the developers spend the money. He will bring the public utility out to that part of town. Let him spend the money to do it, he is willing to do that. That's the only reason I got involved with it, was over that issue that one of these days, that area is going to have to have service out there. Why not have private dollars pay for it now, rather then have the City pay for it later? That's the only reason why I got involved in this project, period.

Ostner: Madam Chair, I did not mean to insinuate that the City would have to pay for the 2,500 feet. My point was simply to consider that this piece of property is including in its proposal to extend that as Mr. Sloan stated. I think it changes things; that simply means this piece of property is not only willing to apply for rezoning but is willing to go the long distance. It just makes it clear to me that it's a stretch. That's all I'm saying, I'm not casting judgment, not that it's bad. I'm not trying to say that the City is going to be holding the bag, I'm just saying it's a stretch. Part of our charge is to keep development contiguous I believe. That is why we are only allowed to annex adjacent to the City limits, under the logic of continuity. We are contiguous to the City limits, but not contiguous to the development. It's fairly undeveloped or sparsely developed as evidence by the 2,500 ft link. That's what I'm trying to say, it's a stretch.

Anthes: Question for Mr. Williams, for as I can see here, the extension of the sewer line is a policy issue that an annexation, if we agree to accept property into the City, then we also agree to serve it with city services. What I'm wondering is, if this body recommended an annexation request, would we be requiring that the City would deliver City services to that site? Whereas, if the City Council chose to do so, they can negotiate with the applicant about extending those services...

Williams: In reality, there are number of places within Fayetteville that do not have sewer service. You get sewer service if you have a sewer main close enough to your property to access it. If they wanted sewer service inside the City, they would have to extend the main 2,500 ft at the developer's cost, not at the City's cost. The same thing even with the water. We have number of City residences, which I found out at recent City Council meetings, that don't have City water because they are not close enough to a water main and chose not to extend the water main, so they can get City water. So, the city makes available these services but you have to develop or the developer has to extend the sewer main to the corner of your property and you put your own service line to it. So, this would not be guaranteeing them the sewer service, even if they were annexed.

Harris: I did have a question for the applicant, Charlie, sorry. If we in fact, were to vote to approve the annexation but change the rezoning to a much less dense zone, would the applicant be amendable?

Sloan: Well, I guess zone it the way you want it and then I'll have to check with them. I will give you my permission. They have numbers they have to run to a certain point on the property. We will have to discuss it with the land owners around there. It would be nice if you could keep everything 5 acres. That's not going to be the reality of it. I don't know if they might not come back with a PZD. The problem of the zoning is the minimums on the widths and stuff like that when you are trying to work a property around. It's almost like you can throw these things away and just say we approve the project or not based on the layout, we like it. Because that gets into a tough situation to make things fit, because you have certain minimums. For instance, my project out there by my house, we did 1 acre estate lots. I asked for RSF-2 and got RSF-1. Ya'll gave me RSF-4, but we did the one acre, because a couple of those lots don't quite make that 50-foot frontage, and didn't have the space to put it in there. So, we asked for RSF-2, still ended up going a little bit deeper, making our lots an acre depth. I can't speak for them; I'm not involved in that part of it. I was just trying to see if we could eliminate a step system out there, that's what I was trying to do with this. Compatibility is still yet another issue. I not sure if they would love to stay where they're at or somewhere in that range. All they can do is take your recommendation, maybe come back and switch it to a PZD. Something to allow them to guarantee to the neighbors what they are going be able to do to get some assurance. You know I'm a big fan of PZD's.

Anthes: It seems to me that a lot of the discussion seems to be leaning towards possibility recommending annexation, but at a lower density zoning. I'm just looking at refact that this body made a unanimous recommendation awhile back and as staff has reported very little has actually changed in the

application between that time and now. In the interest of consistency and findings of the staff that the configuration is not in compliance with the policies for annexation, I make a motion to deny annexation request 06-2046.

Trumbo: Second.

Anthes: A motion by Commissioner Anthes and a second by Commissioner Trumbo. Is there further discussion? Will you call the roll?

Pate: What was the motion for?

Anthes: To deny.

Roll Call: The motion to deny 06-2046 carries with a vote of 6-3-0.

Anthes: As far as the rezoning request, it drops right? But do we still need to state our opinions?

Williams: In the past, you have gone ahead and recommended, if the City Council disagrees with you on the zoning. You would recommend what it would be.

Anthes: Well, we have had several Commissioners state that they thought the RSF-4 zoning district is too dense for the area. We have had one Commissioner state that he thought a RSF 0.5 or RSF-1 would be more in keeping in the area. Do we have any others thoughts on that?

Pate: RSF-.5, Residential Single-Family, ½ unit per acre, has a minimum size of two acres, basically 1 unit for every two acres. It just doesn't allow agricultural uses. We have RSF-1, Residential Single-Family, 1 unit per acre which has an 1 acre minimum. RSF-2, Residential Single-Family, 2 units per acre, and then RSF-4 and RSF-7.

Anthes: Mr. Williams, do we need to just state our preference? Or do you want a motion?

Williams: I think in the past, you voted on it. If I'm not mistaken.

Anthes: I'm thinking we did as well.

Williams: Why don't you go ahead? A conditional recommendation, if the City Council disagrees with you, assuming it is appealed, your recommendation would be…

Ostner: I will start with a motion of approving the same piece of property, forwarding it to the City Council as RSF-.05, ½ a unit per acre or 1 unit sitting on 2 acres.

Anthes: I'll second

Trumbo: It seems to me, we will rezone RSF-4, which is pretty much standard in a residential neighborhood. The thing that concerns me is this is pretty close to being in the center of town. It has access to Hwy 265 and Old Wire. Just purely planning, standing back and taking a look at it, it appears to me that RSF-4 would be a more appropriate zone. Just where it's based in the City. Not considering what's already there, but the neighbors to the north and to the south. Everything else is just raw land. I'm not really stuck on RSF-4, but it doesn't seem way on the outskirts; a denser zoning would be appropriate right here, at some point in time. That's my only comments.

Harris: I would agree, and echo Commissioner Trumbo's comments. The applicant may wish that they don't get annexed with this zoning. I'm not entirely sure which one, I'm not married to RSF-4 either, but I would like to think of more dense on what we are currently discussing.

Anthes: Any further discussion? We have a motion by Commissioner Ostner and second by Commissioner Anthes for RSF-.5 as a conditional recommendation to City Council. Will you call roll.

Roll Call: The motion for RSF-.5 as a conditional recommendation to City Council for 06-2047 carries with a vote of 5-4-0.

ANX 09-3409: (BROYLES / 3231 N. OLD WIRE RD., 217): Submitted by APPIAN CENTER FOR DESIGN for property located at 3231 N. OLD WIRE ROAD, NW CORNER OF OLD WIRE ROAD AND ROM ORCHARD ROAD. The property is in the Planning Area and contains approximately 39.33 acres. The request is to annex the subject property into the City of Fayetteville.

Andrew Garner, Senior Planner, gave the staff report giving the background for the previous annexation requests for this property. Garner summarized the annexation findings, discussing that this property and the vicinity is not urban in character or able to be developed at urban densities, and would extend a peninsula of City property approximately 1,300 feet into the County. He discussed the public service challenges of this site as it is located approximately 2,500 feet from the nearest sewer line, approximately the same distance for water lines to ensure adequate fire flow for any development, and the configuration of the property line may cause confusion among emergency responders as one side of the road would be in the City and one side would be in the County. He also discussed that this application is in conflict with the two primary goals of City Plan 2025 to make infill and revitalization our highest priorities, and to discourage suburban sprawl. Staff recommends denial of the application.

Hank Broyles, applicant, stated that they are a new applicant. They have taken steps to smooth out the borders of the proposed annexation boundary and added additional property owners to the annexation. He discussed that if this annexation is approved they will propose an R-PZD for development, including a master plan extending all the way to Highway 265. Highway 265 is the major north-south transportation corridor on the east side of Fayetteville. State Highway 265 is only three blocks to the west, the City is investing 7.7 million dollars on State Highway 265 in this vicinity, and we can't expect there not to be any development in this area. Most of the new development in recent years has taken place west of I-540. However, many people work on Joyce, and other major commercial zones are in close proximity. We should have additional housing on the east side of town to have people be able to live closer to where they work. We need additional housing on this side of town. Infill is very difficult to make work. He discussed that City Plan 2025 encourages infill but that according to a search by Bassett-Mix Realty of this area of town, from Joyce to Lafayette, east of College to Highway 265, there were only four listings of two or more acres. Prices ranged from $110,000 per acre to $900,000 per acre. This is a piece of property, partially in the City limits, not on a mountain, few adjacent property owners, three blocks from the major north-south transportation corridor on the east side of Fayetteville.

Todd Jacobs, applicant, gave a PowerPoint presentation. He discussed the land use setting, that the areas east of Hwy 265 are rural in nature, but the site is only three blocks from Crossover Road. He discussed the lack of opportunity for infill development in this area, due to existing development patterns and slopes to the west of Hwy 265. He went over historical growth patterns in this area, showing areas of single and multi-family development. Historical development patterns follow transportation corridors. The area east of Hwy 265 has development potential because of lack of slopes and streams, floodplains. This is an opportunity to master plan this area for development. He discussed developable land on this side of town and discussed that the east side of Crossover is more developable than the west side, which has hills, creeks, and existing development. He discussed that this site was identified by citizens as a Growth Sector as part of the City Plan 2025 charettes by citizens. Joyce has started to become a financial center. Development will fill in along the east side of Crossover over time. He showed and discussed various exhibits of developable area including slopes, existing development, and floodplains in the area. This site does not have those constraints. He reviewed the existing City limits and how they feel the area around this site will fill in over time. This area is prime for a City neighborhood area in a traditional town form. He discussed that our vision is a master plan for this area.

Public Comment:

Peggy Hart, representing her parents, Lyle and Charlene Smith who live on Rom Orchard, questioned the rationale behind this. This location is nice because it is out in the country but ten minutes from downtown. Why would you want to add houses on curvy roads with no sidewalks? Houses are generally on three-acre lots. It is already congested in this area at Old Wire/Crossover. We currently have undeveloped subdivisions on Skillern and Township. She is recommending denial.

Colleen Gaston, 3270 Rom Orchard Road, can see the property from her front porch. She is opposed to the rezoning anything less than Residential Agricultural. She thinks the annexation is premature. The comments from the developer about the development along the east side of Crossover are somewhat speculative. The applicant mentioned 200 acres but they are only annexing 40 acres. There is not reason to bring this into the City. There are several subdivisions in the City limits in this area of town that are vacant, very close to this area. Maybe the time will come to master plan for this area; however, this has been a very stable area, stayed rural in nature. From what I know of my neighbors no one is interested in selling or subdividing. I do not see this area being prime for development given the current economy. The annexation seems premature at this time.

Terry Payton, has nine acres, he was concerned with the rezoning application. But he agrees with Colleen's comments on the annexation. We are concerned with what the plans for the area are. He discussed congestion at the intersection of Old Wire Road/Crossover Road. He is opposed to a density of four units per acre.

Jeff Dangeau, 3284 Rom Orchard Road, adjacent neighbor to the east across Old Wire Road. Our main concern was with the rezoning. If this is annexed it would allow one house per two acres, which eases my concerns somewhat. He would feel better if a development plan were shown first.

Public Comment Closed

Commissioner Myres discussed that she agrees with staff's findings to recommend denial.

Commissioner Zant said that in his past experience annexations in other Cities have annex property based on guess of whether or not the annexation would benefit the City. We are fortunate here that the City of Fayetteville has a number of annexation policies and guidelines that are to be analyzed when making a decision. There would be a significant investment to meet the sewer requirement. As discussed by staff this application does not meet the adopted annexation policies and based on those findings he recommends denial.

Commissioner Graves discussed that he was on the planning commission when this application came through in previous years. Things have changed over the past 5-6 years. He looked at the old minutes and would still have concern with RSF-4 zoning today, similar to the past applications. However with the annexation, we previously had concerns with fire response that have been addressed now. The fire department now has a new station with a response time of four minutes to this property. He discussed that he would like to see more acreage involved in this annexation, to clean up the boundary. He mentioned the tail off of Skillern Road, not exactly clear how this came to be. This annexation is perhaps an opportunity to start to even up the eastern City boundary. This would leave a gap between this property and the tail off of Skillern Road. This does create a peninsula, but that is just one guideline, and these are just guidelines. He doesn't have as many qualms with this annexation that he had in previous years, now that the police and fire responses are better as opposed to 2005/2006. Development can make the roads better. I would be supportive of bringing it in and letting it be rezoned R-A, and seeing what the applicant proposes as a later time. He is okay with a Residential/Agricultural zoning on the property at this time.

Commissioner Winston asked about the issue of one side of the road being in the City and one side of the road being in the County.

Jeremy Pate, Development Services Director, discussed the potential problems that may occur if a vehicular accident or other emergency occurred on this road, and issues with which emergency responder should be called, Fayetteville Police versus Washington County Sheriff's, which was cited as a difficultly by the Police Department. He discussed the past annexations when the City annexed islands of unincorporated property that were surrounded by City property to correct this issue.

Commissioner Winston asked about Bridgewater Road, when it would be constructed.

Pate responded that it was just a line on the Master Street Plan map at this point, and would be constructed by the developer at the time of development.

Commissioner Winston asked about the improvements to Crossover Road, and if any improvements would be made to the intersection of Crossover Road/Old Wire Road.

Pate discussed that Crossover is a state highway and the improvements are a state highway project and in our transportation bond program, with the City having committed 7.7 million dollars to the project. However, the costs for the project have risen since the 7.7 million dollars were committed. The project is eminent and right-of-way is being obtained. Pate discussed that he is not sure about detailed of the planned improvements to Crossover Road/Old Wire Road, but anticipates that intersection would be improved.

Commissioner Winston asked about the City's responsibility to this property if it is annexed.

Pate responded that we have to provide emergency response and trash service immediately, and access for connection to City water and sewer. In almost every annexation application, there is some sort of development pressure, and the development would result in the required extensions or improvements to water and sewer.

Commissioner Winston discussed that there is a multi-use trail shown along Skillern Road, although the transportation plans show many trails outside the City. It seems like it may be appropriate now and will be appropriate in the future.

Commissioner Zant normally I wouldn't have any problem with any annexation, but he doesn't see any rationale for the application at this time. Ultimately this property will be annexed. But the findings all lead to a recommendation for denial at this time and I feel strongly that it should be denied at this time.

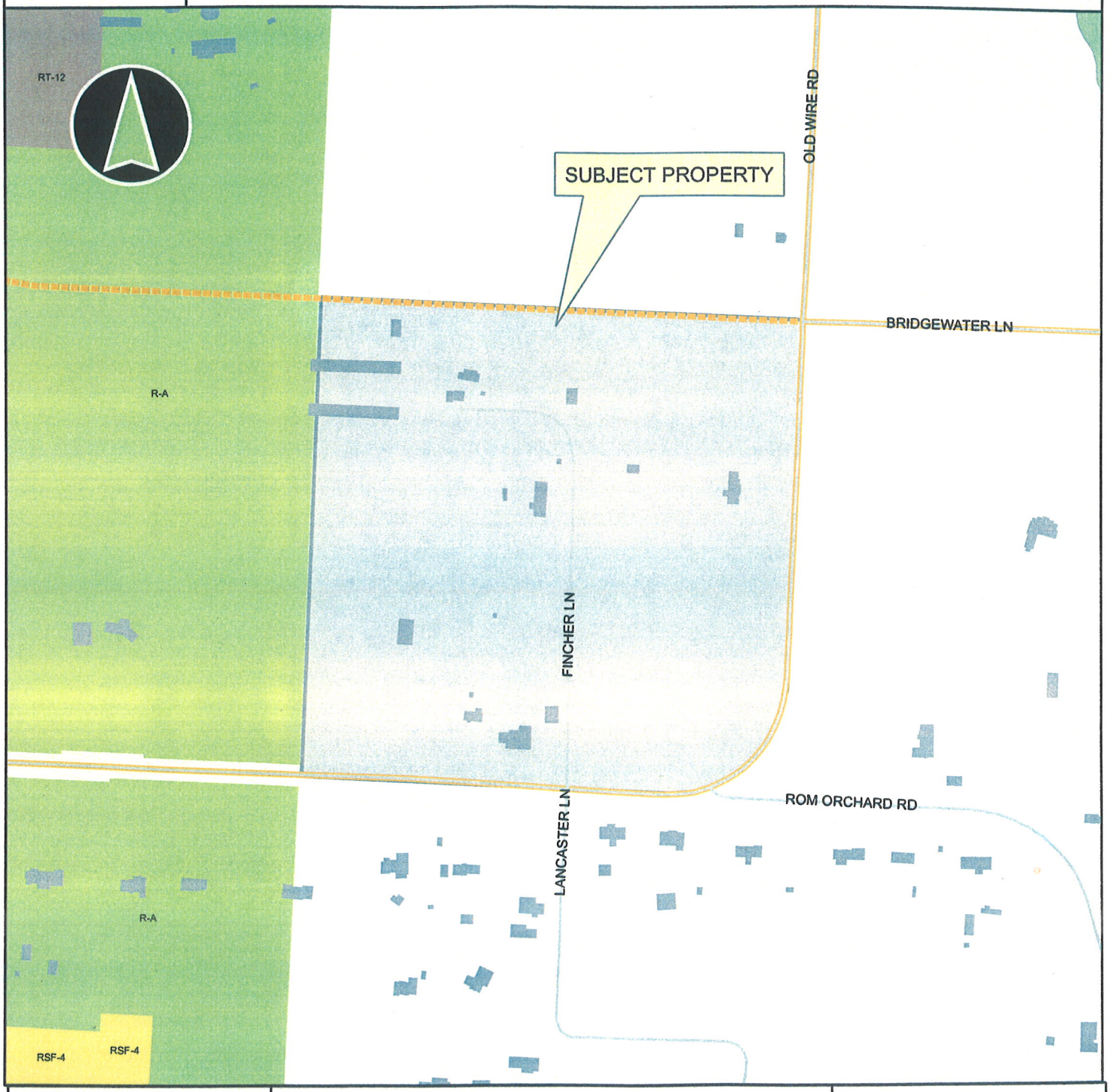
Motion:

Commissioner Myres made a motion to deny the request. **Commissioner Zant** seconded the motion. **Upon roll call the motion to deny passed with a vote of 5-4-0 (commissioners Graves, Winston, Kennedy, and Trumbo voting "no").**

ANX09-3409

Close Up View

BROYLES



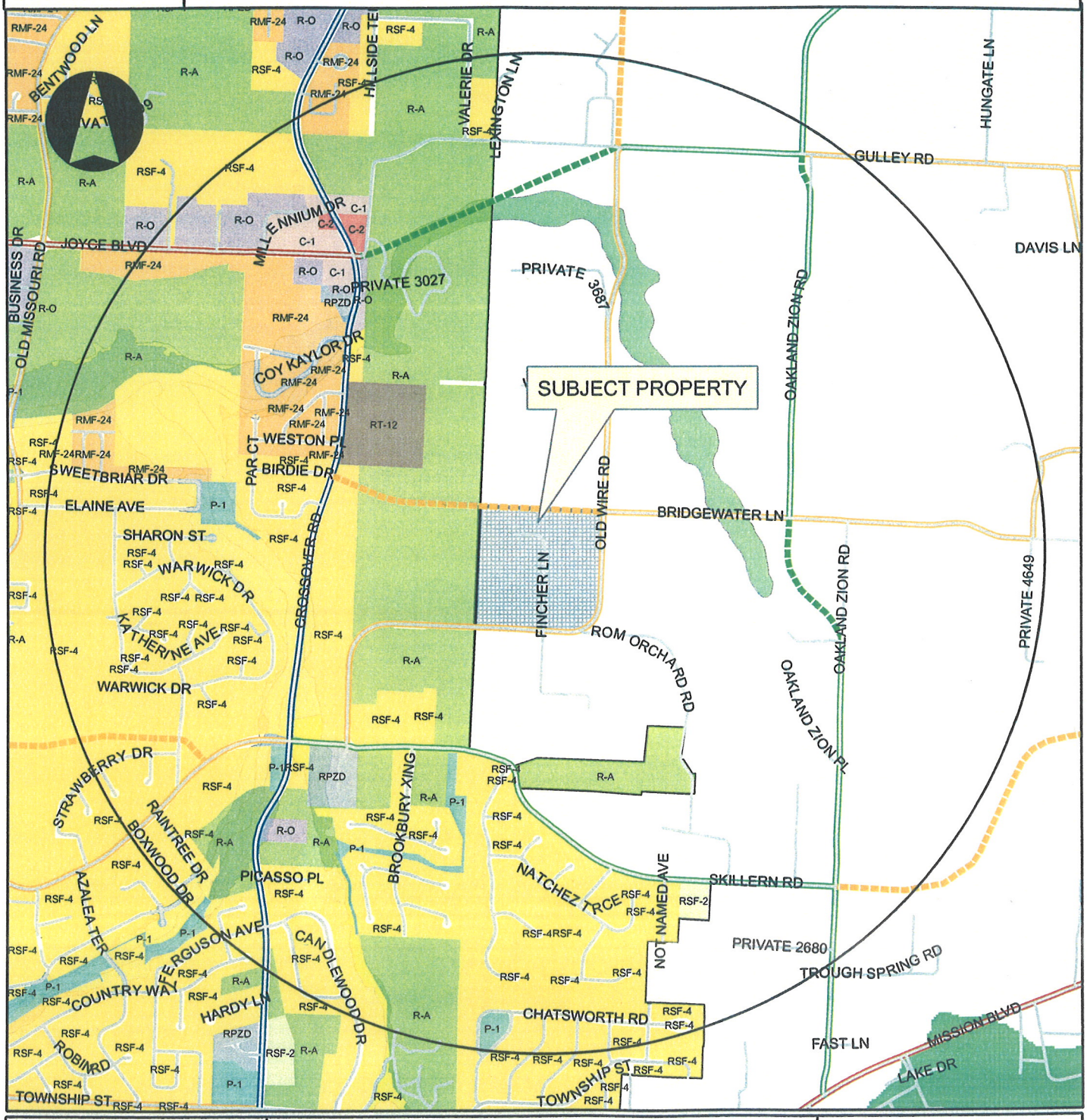
Overview

0 150 300 600 900 1,200 Feet

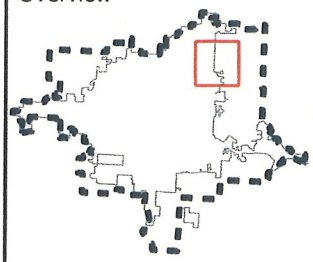
ANX09-3409

One Mile View

BROYLES



Overview



Legend

Subject Property

ANX09-3409

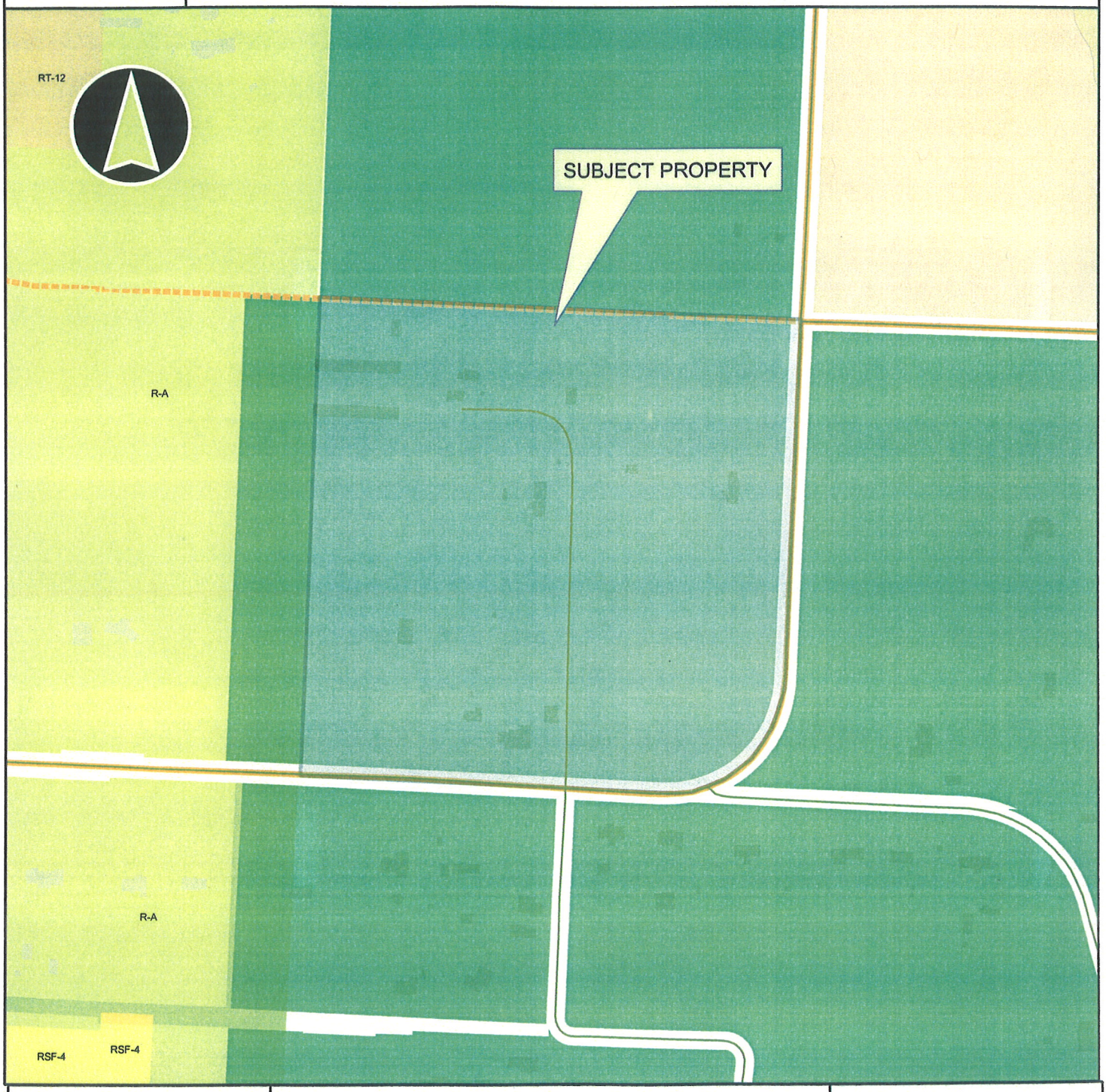
Boundary

0 0.25 0.5 1 Miles

ANX09-3409

Future Land Use

BROYLES



Overview

0 150 300 600 900 1,200 Feet

Pre-Agenda Session 9-23-09

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Fayetteville
ARKANSAS

Aldermen

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

Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 6, 2009

A meeting of the Fayetteville City Council will be held on October 6, 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

Agenda Session Presentations: Sales Tax Report & General Fund Budget Discussion ~~Sales Tax Update~~

1. General Fund Budget Discussion – Paul Becker

2. Telecommunications Board presentation to the City Council concerning cable franchise recommendations.

Mayor's Announcements, Proclamations and Recognitions:

1. Methamphetamine Awareness Month Proclamation Tentative

Presentations, Reports and Discussion Items:

1. **Newspaper Publishing Discussion:** Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

A. Consent:

1. Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

2. **Bid # 09-54 Frost Oil Company:** A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

3. **Bid # 09-55 Electronic Video Systems:** A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

4. **Bid # 09-57 Danny Robinson Construction, LLC:** A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

5. **Bid # 09-58 Chevy of Fayetteville:** A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

6. **Bid # 09-59 Chevy of Fayetteville:** A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

7. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

Agenda Additions-

B. Unfinished Business:

Add kit memo

1. **Rock Quarries Facilities:** An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting.*

   This Ordinance was left on the Second Reading

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   This Ordinance was left on the Second Reading

C. New Business:

1. **2009 Sales and Use Tax Bond Ordinance:** An ordinance authorizing the issuance and sale of the City's Sales and Use Tax Capital Improvement Bonds, Series 2009, for the purpose of financing a portion of the costs of certain street and trail system improvements; authorizing the execution and delivery of a second supplemental trust indenture pursuant to which the bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

NB #12

2. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

3. **Amend Chapter 50:** An ordinance waiving the automatic annual price increase for residential trash service for fiscal year 2010; and amending a portion of Chapter 50: Garbage and Trash of the Fayetteville Code of Ordinances.

#22

4. **2009 Millage Levy:** An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mills for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas.

5. ~~**Amend Chapter 51:**~~ move to next agenda Don has this packet.

6. **Old Wire Annexation Appeal:** An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres.

~~**Agenda Additions:**~~ move to after consent

Announcements:

1. **City Council Tour: October 5, 2009**

Adjournment:

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Pre-Agenda Meeting 9-29-09

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

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

Tentative Agenda
City of Fayetteville, Arkansas
City Council Meeting
October 6, 2009

A meeting of the Fayetteville City Council will be held on October 6, 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

Agenda Session Presentations:

1. Sales Tax Report and General Fund Budget Discussion – Paul Becker
2. Telecommunications Board presentation to the City Council concerning cable franchise recommendations.

Mayor's Announcements, Proclamations and Recognitions:

1. Methamphetamine Awareness Month Proclamation

Presentations, Reports and Discussion Items:

1. **Newspaper Publishing Discussion:** Resolution 77-09 was passed on April 7, 2009 to be revisited in 6 months.

A. Consent:

1. Approval of the September 1, 2009 and September 15, 2009 City Council meeting minutes.

2. **Bid # 09-54 Frost Oil Company:** A resolution awarding Bid # 09-54 and approving a contract with Frost Oil Company in the estimated annual amount of $58,363.06 to supply engine oil and lubricants to the Fleet Operations Division.

3. **Bid # 09-55 Electronic Video Systems:** A resolution awarding Bid # 09-55 and approving the purchase of a video production system and related equipment from Electronic Video Systems in the amount of $23,183.00 for use in the City Council Chamber.

4. **Bid # 09-57 Danny Robinson Construction, LLC:** A resolution awarding Bid # 09-57 and approving a contract with Danny Robinson Construction, LLC in the amount of $91,044.00 for the complete installation of two (2) trail bridges for the third phase of Lake Fayetteville Trail; and approving a 15% project contingency in the amount of $13,656.60.

5. **Bid # 09-58 Chevy of Fayetteville:** A resolution rescinding resolution # 117-09, awarding Bid # 09-58 and approving the purchase of one (1) compact 4 x 4 pickup truck from Chevy of Fayetteville in the amount of $19,800.00 for use by the Fayetteville Executive Airport.

6. **Bid # 09-59 Chevy of Fayetteville:** A resolution rescinding resolutions # 118-09 and # 122-09 and awarding Bid # 09-59, approving the purchase of two (2) 2 x 4 pickup trucks from Chevy of Fayetteville in the amount of $33,994.00 for use by the Inspections and Meter Operations Divisions.

7. **State and Tribal Assistance Grant (STAG):** A resolution authorizing the Mayor to accept a State and Tribal Assistance Grant (STAG) in the amount of $291,000.00 from the U.S. Environmental Protection Agency for sanitary sewer system improvements; and approving a budget adjustment recognizing the grant revenue.

8. **Insituform Technologies, Inc.:** A resolution approving a task order to the contract with Insituform Technologies, Inc. in the amount of $300,000.00 for cured in-place sanitary sewer main line linings; and approving a contingency in the amount of $30,000.00.

9. **Runway 16 Safety Area Improvement Project**: A resolution approving offer and acceptance contracts between the City of Fayetteville and the Standard Register Company and Coulson Properties Limited Partnership for the purchase of land needed for the Runway 16 Safety Area Improvement Project; and authorizing the Mayor and City Clerk to execute said agreements.

10. **2009-2010 Selective Enforcement Program Grant:** A resolution accepting the 2009-2010 Selective Traffic Enforcement Program (STEP) grant in the amount of $108,000.00 for the purpose of paying overtime to officers engaged in the enforcement of DWI/DUI and seatbelt laws and other purposes; and approving a budget adjustment recognizing the grant revenue.

11. **Amend Police Department's Policies, Procedures & Rules Manual:** A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules Manual.

move to NB #5

12. **Amend Chapter 166 ADM 09-3435 (1121 N. Mission Boulevard ROW Variance):** A resolution approving a variance of §166.18 Master Street Plan setbacks of the Unified Development Code to allow the existing structure located at 1121 N. Mission Boulevard to remain within the Master Street Plan right-of-way setback and to be improved greater than the 10% replacement cost allowed by code.

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Fayetteville
ARKANSAS

Handed out at Agenda Session 9-29-09

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Lioneld Jordan and Members of the City Council
Don Marr, Chief of Staff

FROM: Paul A. Becker, Finance Director

DATE: September 22, 2009

SUBJECT: **August 2009 Revenue Sales Tax Report (July Collections)**

The following key points need to be communicated regarding sales tax collections:

FAYETTEVILLE SALES TAX ACTIVITY

1. Sales tax collections remitted for sales tax subject to the 1 cent City tax in August, 2009 were down $69,285 / -5.20% as compared to the same month prior year. These collections represent July, 2009 sales.

2. Sales tax collections remitted to the City for the City's share of County tax collections in August, 2009 were down $23,402 / -2.55% as compared to the same month prior year. These collections represent July, 2009 sales.

3. When compared to budget for the month, sales tax collections were down a total of $137,618 / -6.00% The 2009 year to date budget impact for the eight months is down a total of $1,104,413 / -5.88%.

1% City / 1% County (Combined)	Budget	Actual	$ Difference	% Difference
December, 2008	$ 2,662,000	$ 2,592,017	$ (69,983)	(2.63%)
January, 2009	2,101,200	1,994,181	(107,019)	(5.09%)
February, 2009	2,232,200	2,100,539	(131,661)	(5.90%)
March, 2009	2,411,800	2,258,355	(153,445)	(6.36%)
April, 2009	2,285,800	2,134,969	(150,831)	(6.60%)
May, 2009	2,394,500	2,237,466	(157,034)	(6.56%)
June, 2009	2,397,000	2,200,177	(196,823)	(8.21%)
July, 2009	2,292,800	2,155,182	(137,618)	(6.00%)
YTD Budget to Actual	$ 18,777,300	$ 17,672,887	$ (1,104,413)	(5.88%)

Funding Source		Budget	Actual	$ Difference	% Difference
General Fund:	1% City (60% Split)	$ 6,748,400	$ 6,328,896	$ (419,504)	(6.22%)
	1% County	7,530,000	7,124,727	(405,273)	(5.38%)
		$ 14,278,400	$ 13,453,623	$ (824,777)	(5.78%)
ST Capital:	1% City (40% Split)	$ 4,498,900	$ 4,219,264	$ (279,636)	(6.22%)
Total General/ST Capital Funds:		$ 18,777,300	$ 17,672,887	$ (1,104,413)	(5.88%)

NWA REGION SALES TAX ACTIVITY - JULY 2009 COLLECTIONS

4. July, 2009 1% City Sales Tax collections as compared to the surrounding areas were as follows:

City Sales Tax Collections:		July 2008	July 2009	$ Difference	% Difference
1% City:	Fayetteville	$ 1,331,844	$ 1,262,560	$ (69,285)	(5.20%)
	Springdale	$ 877,389	$ 874,614	$ (2,775)	(0.32%)
	Bentonville	$ 669,972	$ 506,344	$ (163,627)	(24.42%)
	Rogers	$ 1,018,959	$ 932,693	$ (86,266)	(8.47%)

5. July, 2009 1% County Sales Tax collections as compared to the surrounding areas were as follows:

County Sales Tax Collections:		July 2008	July 2009	$ Difference	% Difference
Washington	Fayetteville	$ 916,024	$ 892,622	$ (23,402)	(2.55%)
Washington	Springdale	$ 690,991	$ 673,338	$ (17,653)	(2.55%)
Benton	Bentonville	$ 334,880	$ 287,275	$ (47,605)	(14.22%)
Benton	Rogers	$ 672,068	$ 576,530	$ (95,538)	(14.22%)

6. July, 2009 countywide collections for the combined Washington and Benton Counties were as follows:

County Sales Tax Collections:	July 2008	July 2009	$ Difference	% Difference
Washington County	$ 2,488,858	$ 2,425,274	$ (63,584)	(2.55%)
Benton County	2,603,806	2,233,661	(370,145)	(14.22%)
	$ 5,092,664	$ 4,658,935	$ (433,729)	(8.52%)

NWA REGION SALES TAX ACTIVITY - YEAR-TO-DATE (EIGHT MONTHS) COLLECTIONS

7. Year-to-Date (eight months) collections as compared to the surrounding areas were as follows:

City Sales Tax Collections:		(Eight Months) YTD 2008	(Eight Months) YTD 2009	$ Increase (Decrease)	% Increase (Decrease)
1% City:	Fayetteville	$ 11,026,765	$ 10,548,159	$ (478,606)	(4.34%)
	Springdale	$ 7,049,154	$ 6,688,833	$ (360,321)	(5.11%)
	Bentonville	$ 5,925,156	$ 5,096,728	$ (828,428)	(13.98%)
	Rogers	$ 8,025,881	$ 7,580,778	$ (445,103)	(5.55%)

8. Year-to-Date (eight months) for the combined Washington and Benton Counties, sales were down - $2,500,624 / -6.02%.

Sales Tax Collections:	(Eight Months) YTD 2008	(Eight Months) YTD 2009	$ Increase (Decrease)	% Increase (Decrease)
Washington County	$ 20,058,249	$ 19,358,043	$ (700,206)	(3.49%)
Benton County	21,495,246	19,694,828	(1,800,418)	(8.38%)
	$ 41,553,495	$ 39,052,871	$ (2,500,624)	(6.02%)

Handed out at Agenda Session
9-29-09

Fayetteville
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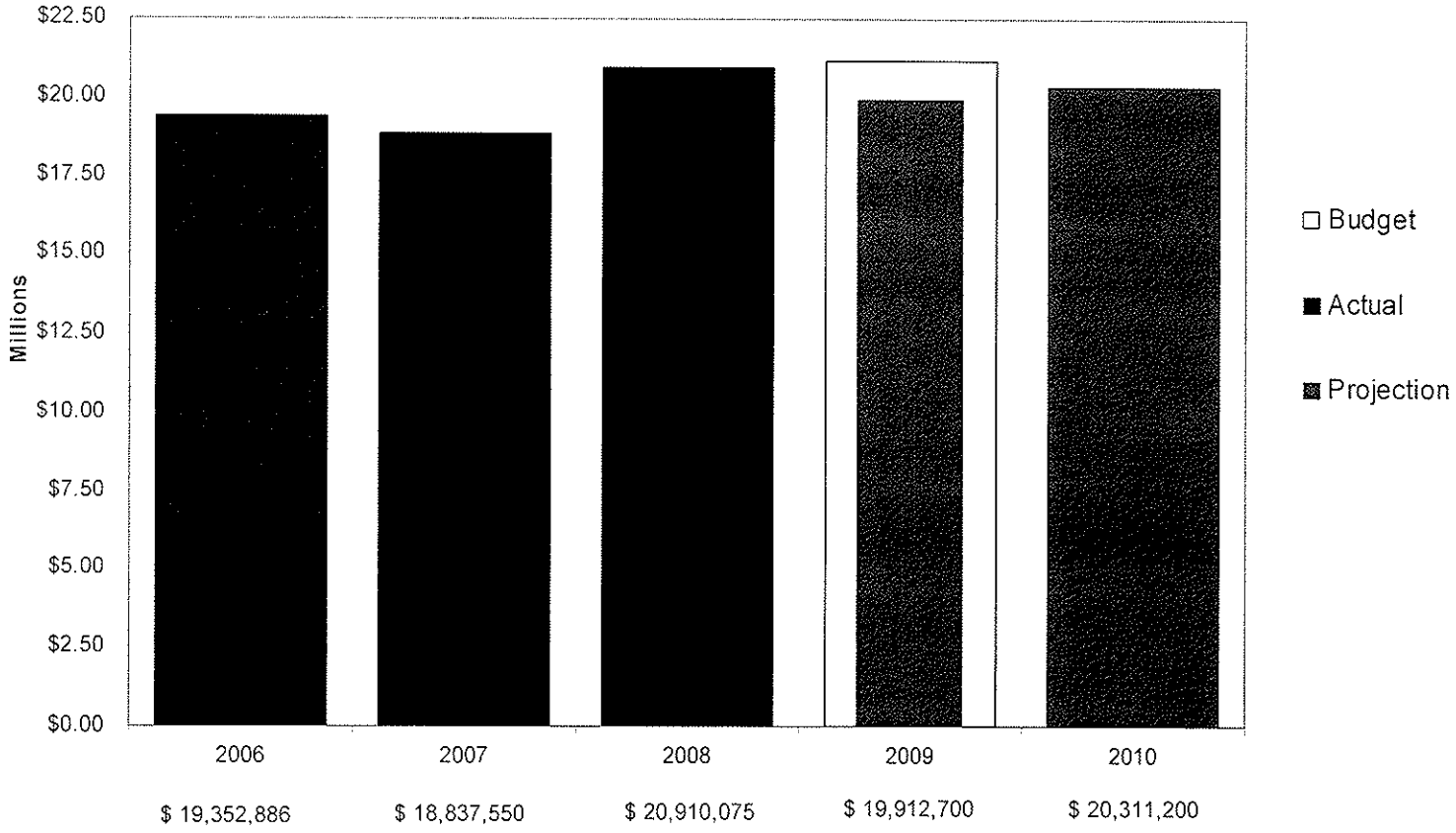
General Fund
2010 Budget Summary

September 29, 2010

2010 Revenue Outlook

Fayetteville
ARKANSAS

Sale Tax
City of Fayetteville, Arkansas
Combined General Fund Sales Tax
5 Year Projection



Amount which had been budgeted for 2009 was $21,176,000.

Last five months of estimated revenue for 2009 represents a decrease of 6% over actual 2008.

2010 General Fund Proposed Budget - Revenue Highlights

Revenue Source	Actual 2008	Estimated 2009	Budgeted 2010	Change Between 2009/2010 Amount	%
Sales Tax Revenue	$ 20,910,100	$ 19,912,700	$ 20,311,200	$ 398,500	2.0%
Property Tax Revenue	1,416,100	1,491,300	1,570,400	79,100	5.3%
Franchise Fees	4,834,800	4,689,400	4,706,600	17,200	0.4%
Building Permits	1,162,900	419,100	419,100	-	0.0%
All Other Revenue	6,817,900	6,214,000	6,138,500	(75,500)	-1.2%
Investment Earnings	303,700	184,700	184,700	-	0.0%
Transfer from Capital Improvements	311,000	417,900	0	(417,900)	-100.0%
	$ 35,756,500	$ 33,329,100	$ 33,330,500	$ 1,400	0.0%

- Sales Tax for 2010 is approximately 3.0% under 2008 actual revenue but 2% over 2009 estimated collections.
- Property Tax for 2009 is projected to be up 5.3% compared to the 2009 Budget. This estimate is based on assessed value.
- Franchise fees are estimated to be flat compared to the 2009 estimate.
- Building permits are estimated to be flat compared to the 2009 estimate.
- Investment Earnings is projected to be flat compared to the 2009 estimate.
- The “One-Time” Transfer from Capital Improvements was removed from 2010.
- All other revenue for 2010 is projected to be flat compared to 2009 estimated revenue.

2010 General Fund Summary

Fayetteville
ARKANSAS

2010 Proposed General Fund Expenditure Budget:

(Changes Between Adopted 2009 and Proposed 2010)

		Budget
2009 General Fund Adopted Expense Budget:	$	35,801,900
Additions:		
Salaries/Wages & Pension (Primarily Due to Prior 7/1/09 Increases)		314,266
Health Insurance (Rate Increase)		90,737
Unemployment Insurance		50,000
Software Maintenance		37,336
Election Cost		15,000
Bad Debt Expense		10,000
		517,339
Reductions:		
Salary Contingency		(317,600)
2009 Budgeted Positions Eliminated in 2010		(114,500)
Fuel		(96,589)
Other		(92,070)
Contract Services		(68,768)
Lease Expense (GCM Building)		(43,408)
Public Notification		(35,115)
Pension Administration Fee		(34,745)
Uniforms/Equipment		(16,795)
Radio Maintenance		(14,598)
Publications/Dues & Travel & Training		(11,717)
General Motorpool Charges		(5,882)
		(851,787)
2010 Proposed Budget General Fund	$	35,467,452

2010 Proposed General Fund Budget:
(Proposed Adjustments)

			Budget
2010 General Fund Proposed Expense Budget:		$	35,467,452
2010 General Fund Proposed Revenue Budget:		$	33,330,500
	Short Fall	$	2,136,952
Less:	Vehicle Replacement Charges	$	(504,352)
	Frozen Positions		(391,914)
	Additional Reductions		(51,646)
	Short Fall	$	1,189,040

Frozen Positions

Intern I (1310012)	9,723
Budget Analyst (1330004)	45,646
Assistant City Engineer (6210001)	32,096
Director Of Current Planning (6300001)	80,196
Permit Clerk (6300008)	33,039
Building Official - Safety (6400001)	67,155
Reduce Fire Financial Assistant to (Half Time)	30,000
Hold one Police Officer Position	48,188
Delay Hiring of 3 Firefighter Positions	20,000
Change Building Services Director (to Cost Share)	25,871
	391,914

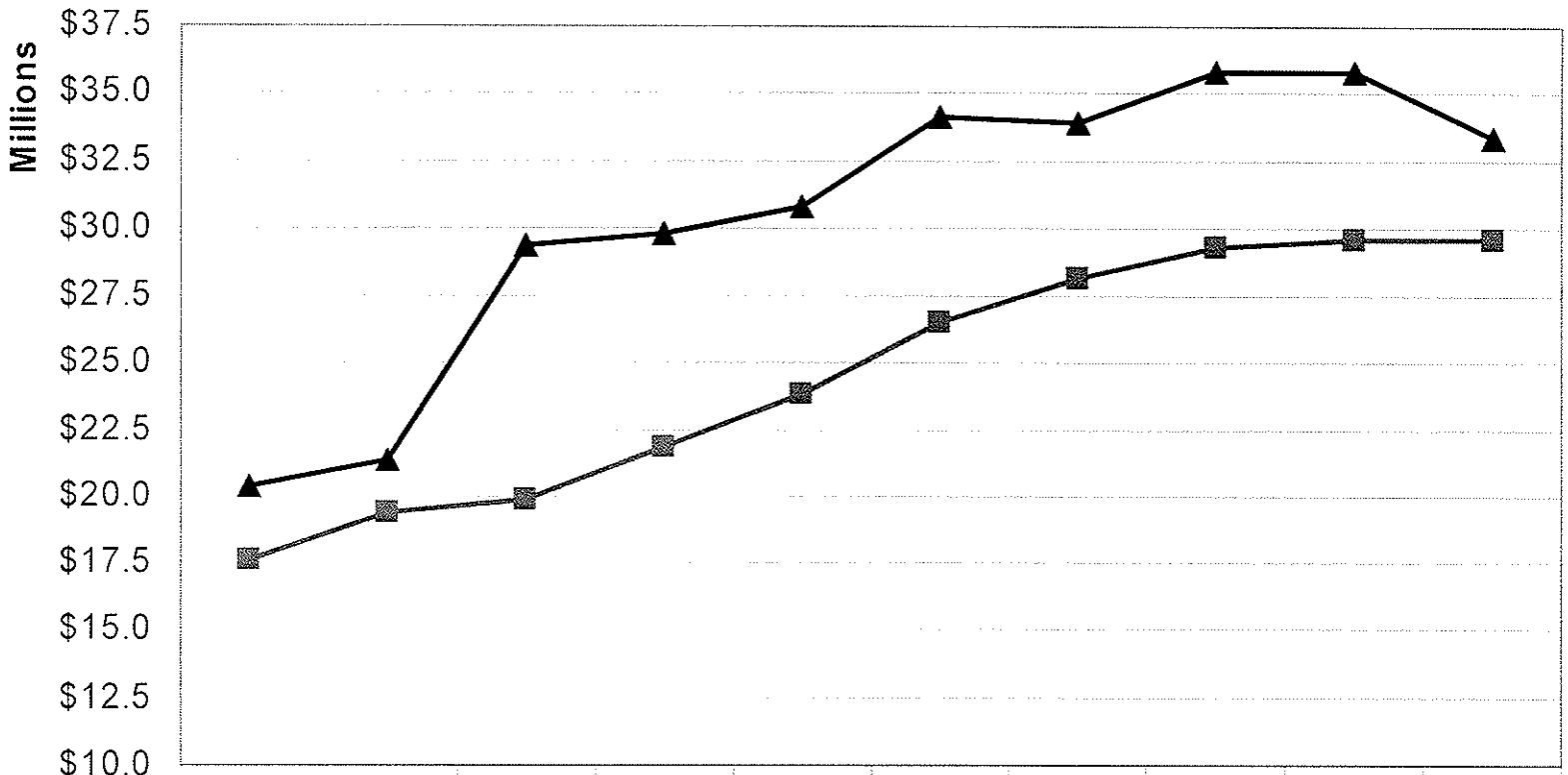
Additional Reductions:

Cut Planning Commissioner's Salaries	43,596
Reduce Boys & Girls Club Subsidy by 3%	6,400
Reduce NWAEDD (Senior Center) Subsidy by 3%	1,650
	51,646

Personnel Services
As a Portion of Total Revenue

Fayetteville
ARKANSAS

General Fund Revenue Vs. Personnel Services Expense



	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Adopted 2009	Proposed 2010
Personnel Services	17,574,503	19,350,590	19,851,648	21,845,952	23,820,401	26,527,245	28,130,078	29,275,763	29,589,074	29,577,232
Revenue	20,317,377	21,331,214	29,343,077	29,764,192	30,750,859	34,088,915	33,884,776	35,810,564	35,801,900	33,330,500

What are the Available Options to Accommodate the $1,189,040 Shortfall?

- Reduce Operating Expenses
- Reduce Capital Expenditures
- Increase Millage
- Use Available Reserves

Reduction of Operating Expenses

- Staff has carefully examined departmental budgets and open positions for reductions. A total of $850,000 has been identified and reduced from the 2010 General Fund Budget.
- The budget does not include salary increases for employees who received an increase prior to 07/01/2009.
- A total of $391,914 in open positions will be frozen in 2010.
- Any further operating cuts will result in a reduction of programs and services.

Reduction of Capital Expenditures

- Reduction of capital expenditures has been addressed by eliminating shop replacement charges in the amount of $504,000.

- It should be noted that the reduction in sales tax collections has already impacted the funds for capital programs negatively as less money is available for needed capital projects.

Increase Millage

- The Mayor requests that the current operating millage of 1.3 mils be continued for the fiscal year 2010.
- To cover the projected budgetary shortfall, it would require approximately a 1.0 mil increase.
- In view of the current economic conditions, the Mayor is not in favor of and does not recommend the increase of the current millage levied for operations.

Property Tax Rates (Comparable Arkansas Cities)

City	City Millage Levy *					Annual Tax Paid by Homeowner ($200,000)**
	General	Police/Fire Pension	Library	Bonds/ Other	Total	
Little Rock	5.0	2.0	3.3	5.3	15.6	$ 624.00
Fort Smith	5.0	2.0	1.0	-	8.0	320.00
Springdale	4.7	1.0	-	-	5.7	228.00
Bentonville	5.0	0.5	-	-	5.5	220.00
Rogers	1.4	1.0	0.9	1.5	4.8	192.00
Fayetteville	1.3	0.8	1.0	-	3.1	124.00

* Source: State of Arkansas - Assessment Coordination Department: 2008 Millage Report (2009 Collections) / Published May 2009

** Appraised Value

Use of Reserves

- The Mayor recommends the $1.2 million shortfall be covered through the use of reserves.

- An analysis of the General Fund fund balance indicates this is feasible and would still provide a more than adequate safety net for the City

General Fund
Unobligated Fund Balance Analysis
Estimated 12/31/2009

Reported Fund Balance (1/1/2009)	$ 9,289,000
Less:	
Prior Year Obligations	517,000
Prior Year Surplus (2008)	530,000
Required Reserve (60 days of Operations)	5,750,000
Possible 4th Quarter Expenditures	550,000
Available Reserve	$ 1,942,000

General Fund
Unobligated Fund Balance Analysis
Estimated 12/31/2010

Available Reserve as of 12/31/2009	1,942,000
Reserve used to fund 2010 Budget	(1,190,690)
Required Reserve (60 days of Operations)	(5,750,000)
Remaining General Fund Reserves	$ 6,500,000

Summary of Administration Recommendations

1) To keep the millage rate for the General Fund at the current 1.3 mil level.

2) To reduce the capital program funding by forgoing replacement charges from divisions in 2010 and extending replacement periods for vehicles.

3) To fund the revenue shortfall of $1,189,040 for the General Fund with reserves.

TELECOMMUNICATIONS BOARD
CABLE FRANCHISE RECOMMENDATIONS
TO THE CITY COUNCIL & CITY ADMINISTRATION
August 20, 2009

In late 2005 the City Council did not approve the franchise agreement presented to them. The Cox Cable Franchise was written in 1989 and expired on November 2001, has been in effect on a year to year basis since then with no changes. The Telecommunications Board recommends that the Cable Franchise negotiations be resumed with following points:

1. That, at a minimum, the number of PEG channels available to the City be increased to four, in order for the Fayetteville Public Schools and The University of Arkansas to have separate channels.

2. That a review and assessment of the current Cable Franchising Law and Climate be made, particularly in regard to whether or not the "Formal" Franchise negotiating process is still a viable process.

3. That if the review and assessment indicates that the "Formal" Franchise negotiating process is viable, a new "Needs and Interests" survey be conducted and compiled. This will essentially be an update to the survey completed in 1999.

4. Consider obtaining the services of a firm specializing in Cable Franchise Negotiations.

5. Proceed to negotiate a Franchise Renewal based on an up-to-date "Needs and Interests" survey if the "Formal" process is viable. If the "Formal" process is not viable, proceed, preferably guided by a firm specializing in Cable Franchise Negotiations, in the most advantageous manner available.

Approved by the Telecommunications Board, August 20, 2009

Sept. 2, 2009

Aubrey J. Shepherd, Telecommunications Board Chairman