

Alderman Adela Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

Final Agenda

City of Fayetteville Arkansas

City Council Meeting

July 01, 2014

A meeting of the Fayetteville City Council will be held on July 01, 2014 at 5:30 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:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the June 17, 2014 City Council meeting minutes. **APPROVED**

2. **City Council Workers Compensation Insurance Support:** A resolution to express the City Council's support of a legislative enactment to provide for workers compensation insurance coverage for emergency responders for work-related mental injury or illness.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 116-14

3. **Bid #14-29 Forsgren, Inc.:** A resolution to award Bid #14-29 and authorize a contract with Forsgren, Inc. in the amount of \$1,242,968.30 for improvements to the Greenland Gravity Sewer Main, to approve a cost share agreement with the City of Greenland in the amount of \$374,806.67, to approve a project contingency of \$125,000.00, and to approve a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 117-14

B. Unfinished Business:

1. **Amended Articles of Incorporation for the Walton Arts Center Council and Foundation:** An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5693

2. **Walton Arts Center Council, Inc. Lease:** A resolution to approve an Amended and Restated Lease Agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant. ***This resolution was tabled at the June 17, 2014 City Council meeting to the July 1, 2014 City Council meeting.***

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 118-14

C. New Business:

1. **RZN 14-4687 (659 N. Genevieve Ave./Davis):** An ordinance rezoning that property described in rezoning petition RZN 14-4687, for approximately 1.62 acres, located at 659 N. Genevieve Avenue from R-A, Residential-Agricultural to RSF-2, Residential Single Family, 2 units per acre.

THIS ORDINANCE FAILED

2. **RZN 14-4725 (1974 N. Gregg Ave./Gibson):** An ordinance rezoning that property described in rezoning petition RZN 14-4725, for approximately 0.65 acres, located at 1974 N. Gregg Avenue from RSF-4, Residential Single Family, 4 units per acre, to RMF-24, Residential Multi-Family, 24 units per acre.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5694

3. **VAC 14-4740 (514 W. MLK BLVD/Filbeck):** An ordinance approving VAC 14-4740 submitted by Blew and Associates for property located at 514 W. MLK Blvd to vacate an existing utility easement.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5695

D. City Council Agenda Session Presentations:

E. City Council Tour:

F. Announcements:

Adjournment: 7:00 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

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Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

Presentations by staff and applicants. Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aids in a City Council meeting as part of their presentation.

Public comments. Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.

Courtesy and respect. All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

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 (479) 575-8330.

A copy of the complete City Council agenda is available at www.fayetteville-ar.gov or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.

City Council Meeting:

July 1, 2014

Adjourn: 7:00 pm.

Subject:	Roll				
	Adams	Absent during the roll call	✓		
	Long	✓			
	Gray	Absent during the roll call	✓		
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Schoppmeyer	✓			
	Mayor Jordan	✓			

9-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Schoppmeyer				
	Mayor Jordan				

Subject:	Consent				
Motion To:		Approve			
Motion By:		Marsh			
Seconded:		Tennant			
minutes approved 116-14 thru 117-14	Adams	Absent during the vote			
	Long	✓			
	Gray	Absent during the vote			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Schoppmeyer	✓			
	Mayor Jordan				

6-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Schoppmeyer				
	Mayor Jordan				

Subject:		Amended Articles of Incorporation for the Walton Arts Center Council and Foundation			
Motion To:		2nd Reading	Withdraw Amendment	3rd Read	Pass
Motion By:		Long	Tennant	Kinion	
Seconded:		Marsh	Long	Marsh	
B. 1 Unfinished Business <u>passed</u>	Adams	✓		✓	✓
	Long	✓		N	N
	Gray	Absent during the vote.		✓	✓
	Marsh	✓		✓	✓
	Kinion	✓		✓	✓
	Petty	✓		✓	✓
	Tennant	✓		✓	✓
	Schoppmeyer	✓		✓	✓
	Mayor Jordan				

7-0

7-1

7-1

Subject:		Walton Arts Center Council, Inc. Lease			
Motion To:		Approve			
Motion By:		Kinion			
Seconded:		Gray			
B. 2 Unfinished Business <u>passed</u>	Adams	✓			
	Long	✓			
	Gray	✓			
	Marsh	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Schoppmeyer	✓			
	Mayor Jordan				

8-0

Subject:		RZN 14-4687 (659 N. Genevieve Ave./Davis)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Petty	Petty	
Seconded:			Gray	Long	
C. 1 New Business <i>This Ordinance failed.</i>	Adams	✓	✓	N	
	Long	✓	✓	N	
	Gray	✓	✓	N	
	Marsh	✓	✓	N	
	Kinion	✓	✓	N	
	Petty	✓	✓	N	
	Tennant	✓	✓	N	
	Schoppmeyer	✓	✓	N	
	Mayor Jordan				

8-0

8-0

(0-8 failed)

Subject:		RZN 14-4725 (1974 N. Gregg Ave./Gibson)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Petty	Petty	
Seconded:			Tennant	Adams	
C. 2 New Business <i>Passed</i>	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Schoppmeyer	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

5694

Subject:		VAC 14-4740 (514 W. MLK BLVD/Filbeck)			
Motion To:					
Motion By:					
Seconded:					
C. 3 New Business <i>Passed</i> 5695	Adams	✓	✓	✓	
	Long	✓	✓	✓	
	Gray	✓	✓	✓	
	Marsh	✓	✓	✓	
	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Schoppmeyer	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Adams				
	Long				
	Gray				
	Marsh				
	Kinion				
	Petty				
	Tennant				
	Schoppmeyer				
	Mayor Jordan				



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **July 2, 2014**

RE: **Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of July 1, 2014**

1. **City Council Workers Compensation Insurance Support:** A resolution to express the City Council's support of a legislative enactment to provide for workers compensation insurance coverage for emergency responders for work-related mental injury or illness.
2. **Bid #14-29 Forsgren, Inc.:** A resolution to award Bid #14-29 and authorize a contract with Forsgren, Inc. in the amount of \$1,242,968.30 for improvements to the Greenland Gravity Sewer Main, to approve a cost share agreement with the City of Greenland in the amount of \$374,806.67, to approve a project contingency of \$125,000.00, and to approve a budget adjustment.
3. **Amended Articles of Incorporation for the Walton Arts Center Council and Foundation:** An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.
4. **Walton Arts Center Council, Inc. Lease:** A resolution to approve an Amended and Restated Lease Agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant.

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Agenda Additions:

A. Consent:

1. Approval of the June 17, 2014 City Council meeting minutes.
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B. Unfinished Business:

1. **Amended Articles of Incorporation for the Walton Arts Center Council and Foundation:** An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

Left on the First Reading

At the June 17, 2014 City Council meeting an amendment to the Amended Articles of Incorporation for the Walton Arts Center Council and Foundation ordinance was not voted on and tabled to the July 1, 2014 City Council meeting.

2. **Walton Arts Center Council, Inc. Lease:** A resolution to approve an Amended and Restated Lease Agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant. ***This resolution was tabled at the June 17, 2014 City Council meeting to the July 1, 2014 City Council meeting.***

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D. City Council Agenda Session Presentations:

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Adjournment:

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Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

City of Fayetteville Arkansas City Council Meeting June 17, 2014

A meeting of the Fayetteville City Council was held on June 17, 2014 at 5:30 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 Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin Schoppmeyer, Rhonda Adams, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items:

Nominating Committee Report:

Alderman Tennant presented the Nominating Committee Report.

A copy of the report is attached.

Alderman Marsh moved to approve the Nominating Committee Report. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously.

Agenda Additions: None

Consent:

Approval of the June 03, 2014 City Council meeting minutes.

Approved

Net Neutrality: A resolution to express the City Council's support for Net Neutrality.

Resolution 110-14 as recorded in the office of the City Clerk.

Arkansas Historic Preservation Program: A resolution approving a grant agreement with the Arkansas Historic Preservation Program in the amount of \$8,515.00 for travel and training, and for hiring a qualified consultant to research and catalog historic structures; and approving a budget adjustment recognizing the grant revenue.

Resolution 111-14 as recorded in the office of the City Clerk.

Arkansas State Highway and Transportation Department: A resolution to authorize a payment of \$3,500,000.00 to the Arkansas State Highway and Transportation Department representing an initial payment of the City's portion of construction, right of way acquisition and utility relocation costs related to the widening of Highway 112.

Resolution 112-14 as recorded in the office of the City Clerk.

Repeal Resolution No. 143-14 & Pacific Vet Group-USA, Inc. Land Sale: A resolution to repeal Resolution No. 143-14 and to sell about 24 acres in the Fayetteville Commerce District (formerly Industrial Park) to Pacific Vet Group-USA, Inc. for \$360,000.00 and other valuable consideration and to approve a budget adjustment.

Resolution 113-14 as recorded in the office of the City Clerk.

Benedict Settlement – Van Ashe Drive: A resolution to authorize a settlement agreement with Dale and Martha Benedict concerning condemnation litigation filed as part of the Van Ashe Drive construction project.

Resolution 114-14 as recorded in the office of the City Clerk.

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

Unfinished Business: None

New Business:

Fayetteville Natural Areas Preservation Account: A resolution to establish the “Fayetteville Natural Areas Preservation Account” and to establish requirements for disbursals therefrom.

City Attorney Kit Williams: We have been approached by some generous donors that wish to help pay for the share of the Natural Heritage Association commitment to the Mt. Kessler project. They want to do that by setting up a special account here in the city to donate to. They are beginning it with a very generous donation of almost \$5,000.00. They are encouraging other citizens to follow their lead. I recommend you to allow the establishment of the Fayetteville Natural Areas Preservation Account within the General Fund. There are restrictions on how this money can be used.

Connie Edmonston, Parks & Recreation Director gave a brief description of the resolution. She thanked donors Dr. Pete and Margo Heinzelmann and Duane and Judy Woltgen. She stated they started the Fayetteville Natural Areas Foundation.

Dr. Pete Heinzelmann stated he is happy to be in Fayetteville and that it is an incredible community. He believes there are natural areas that need to be conserved and improved. He stated the Fayetteville Natural Areas Foundation was developed to save special areas for future generations. He spoke in favor of the resolution.

City Attorney Kit Williams: I would like to thank them and I would like for you all to stand up for a round of applause.

Mayor Jordan: Thank you all very much.

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

Resolution 115-14 as recorded in the office of the City Clerk.

Amended Articles of Incorporation for the Walton Arts Center Council and Foundation: An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: This has been a long process and one that has been necessitated by the expansion of the Walton Arts Center, that was approved at the end of 2010 by the two

committees, the foundation and the council that operate the Walton Arts Center. The decision was made that a larger performing arts facility would be located in Bentonville. Fayetteville may be able to maintain the Dickson Street facility but I was a little bit concerned. I was afraid the majority of the big broadways shows and musicals would end up in the brand new bigger facility in Bentonville and the Walton Arts Center on Dickson Street would suffer and lose many of the major shows that we have enjoyed for 20 years at the Walton Arts Center.

About a year ago there were discussions between the University of Arkansas, Mayor Jordan and the Walton Arts Center about potentially changing some of the governing documents. We entered into those negotiations and our major goal was to protect and preserve the Walton Arts Center on Dickson Street. We wanted to try to ensure the same quality and quantity of performances we have enjoyed for so long would continue to be there and it would not become a second rate ignored facility once the larger facility in Bentonville was built.

I would like to thank the University and the Walton Arts Center for negotiating fairly with us and allowing me to place language in the Articles of Incorporation that gives us the best assurances and guarantees that it will happen. The Walton Arts Center and Walton Family Foundation did insist on some things. The Articles of Incorporation as they were first begun with the University of Arkansas and the city had concentrated on developments solely of the Walton Arts Center on Dickson Street. The sole purpose of both of those corporations was the Walton Arts Center on Dickson Street. In order to legally move into Benton County and build facilities other places, those Articles of Incorporations needed to be changed and their purposes needed to be broadened to include Bentonville, Rogers and all of Northwest Arkansas. That was one of the major changes in the Articles of Incorporation that are presented to you for approval.

There was a provision in both of the Articles of Incorporation of the Foundation and the Council that they were the agent for the City of Fayetteville and the University of Arkansas, jointly. This is important because an agent is supposed to have your back. It did not work out well for us in 2010 when both the University and the City made an identical joint proposal to keep the major performing arts facility here in Fayetteville. Because of financial considerations that the major donor would not be a lead donor here, but would only be in Bentonville, the decision was made to move it to Bentonville and the University and the City went along with the decision. The City Council and the University of Arkansas did not want to challenge that. Since that time, the Walton Arts Center has decided to embark on an enhancement program for the Walton Arts Center in Fayetteville. Mayor Jordan campaigned to have citizens approve a bond issue for it and all the City Council voted in favor of submitting that question to the citizens. This will refurbish, enhance, and enlarge the Walton Arts Center on Dickson Street.

I wanted assurances, if we gave up our status as the principal over the agent, and if we broadened the purpose to be able to build in Bentonville and Rogers, that we would have similar sort of performances in Fayetteville that we have enjoyed for so long. I have two kinds of wording on this. One is the same quality and quantity of performances. Also within the lease and in the Articles of Incorporation of the Walton Arts Center Council, there is a specific metric to look at. What we had in 2013 is the standard they have agreed they will maintain for the Walton Arts Center on Dickson Street. I was pleased when that decision was finally made. I want to thank them for realizing the concern that we share for the Walton Arts Center on Dickson Street. I told them if

there was too weak a standard, I could not come to you and recommend approval. The Articles of Incorporation specifically includes a provision that says that we, the University and the Walton Family Foundation can enforce the Articles of Incorporation in court in Washington County.

In order for the Walton Arts Center Foundation to no longer be our agent, their Articles of Incorporation say they will return the one and a half million dollars that was placed as the initial beginning of their endowment. The interest was used for operational expenses for the Walton Arts Center through the years and they would return that to the city so we could use it on the deck. We might need that additional money to ensure that we will have the deck we envisioned and told our voters we wanted to build.

Mayor Jordan stated there had been many meetings of negotiations. City Attorney Williams explained it well. He stated he is supportive of what was negotiated.

Terri Trotter, Chief Operating Officer of the Walton Arts Center: I want to thank the Mayor and Kit for their work on this. This is something we have been working on and we are really excited about the plans that we have at the Walton Arts Center. We are about under way on this expansion and it's going to be an exciting time in Fayetteville. We appreciate the cooperation and the opportunity to work together.

Alderman Tennant: Thank you Mayor Jordan and City Attorney Williams. I think this has been very time consuming and you both have been acting in the best interest of the city.

I think this is a really good start. We are very close to being able to do something that will please all parties. FOIA has been brought up a few times and changes that might take place if we pass this governance. The way I understand it now, FOIA rules apply to the meetings and budget discussions of the Walton Arts Center. Does anything change with regards to FOIA as it exist now if we pass this governance?

City Attorney Kit Williams: I don't think it would change. They are subject to some FOIA requirements because they are dealing with public monies. When they are dealing with that money, which is operational money, then I think that they should have an open public meeting with proper notification. If they aren't dealing with that money, then probably the open meetings requirement does not apply to them. When using our tax payer dollars, they should have to follow the open public meetings requirements.

Alderman Tennant: You don't see this changing that if we pass this?

City Attorney Kit Williams: We can't change state law. They can't change state law.

Alderman Tennant: We have four groups with three major goals. The four groups are the Walton Foundation, Walton Arts Center, City of Fayetteville and the University of Arkansas. I want to move the University of Arkansas out of this conversation because they have gotten themselves out of the theatre business on Dickson Street and they are building their own.

The three goals are the ones from the three that are left. The Walton Foundation wants the governance changed because they feel they need this to happen for the regional expansion and so we don't exercise any veto powers. I understand their concern. The Walton Arts Center management want this change to better help them raise money. The citizens of Fayetteville want what was promised to them. We were the only municipality 25 years ago that stepped forward to be a partner in the Walton Arts Center and we were the only ones that have stepped up recently. Fayetteville has proven that we are a partner with the Walton Arts Center in their growth.

Kit, Don and the Mayor have given us a great future of entertainment and culture in the new facility once it's built and with the language written in the agreement. Citizens of Fayetteville have placed over seven million dollars of their own money, plus a sizeable donation each year puts us as the second highest donor to the Walton Arts Center. We need to keep that in mind. We chose to be a partner with the Walton Arts Center, with the promise of a renovated facility on Dickson Street, which now looks to be a total project cost of about 23 million dollars.

Alderman Tennant suggested some proposed amendments to the ordinance. He suggested two contingencies. The Walton Arts Center present the City of Fayetteville a certificate of occupancy for a new 23 million dollar Dickson Street facility constructed to the specifications that the citizens were promised in November. A second option could be conclusion of a successful capital campaign that raises 23 million dollars to be used exclusively for the Walton Arts Center on Dickson Street. I think this is a win for all parties to have these two contingencies. They need this to help raise money so let us empower them to do that. These contingencies reinforce what has been stated as the priorities all three parties already have. As a representative of the people of Fayetteville I think this is valuable for them. We asked them for the most valuable thing they own last November, their vote. We asked them for something very precious and we have to help them protect that.

City Attorney Kit Williams: This would be an amendment not to the agreement, but to the ordinance.

Alderman Marsh: I think Alderman Tennant raises some very good points. I would like us to hold this on the first reading to give the City Attorney the opportunity to get the language right, to give us some time to consider the proposal and get more feedback from our citizens.

A discussion followed about holding the ordinance on the first reading and giving City Attorney Williams time to write out an amendment.

Mayor Jordan asked for public comment on the proposed amendment.

Peter Lane, President/CEO of the Walton Arts Center: What all the parties tried to do in this governance document was to create some clarity. Clarity around what our mission has been since Ms. Helen helped found this organization, which is to serve all of Northwest Arkansas. The governance documents help do that in a number of ways that I think Kit so aptly articulated. The reason there are so many entities and parties involved in this is because we have a lot of stakeholders. There are over a thousand donors and over a couple hundred thousand citizens who purchase tickets every day. The key stakeholders came up with this model because as stakeholders

and contributors, they wanted the confidence that their gifts and other gifts of other donors would know that they had the assurance of being able to give to the Walton Arts Center expansion, but also future opportunities. Clarity was one thing we absolutely needed to have. The ability to operate and run venues throughout Northwest Arkansas. The assurance of what would happen for the Fayetteville facility is in the new lease.

The current lease ends in 2017. When I speak to our largest donors and tell them we have a lease for another three years I can't steward the gift for the term that they would expect that gift to be memorialized. The lease is where we create the assurances you are looking for.

Putting a trigger on the governance that we would have to raise 23 million dollars first is a challenge. The very same people who are parties to this governance are those who would most likely continue to be large donors, especially to the capital campaign. Our largest donors collectively want the assurance that we can operate on a regional basis.

We want to be able to say we have governance documents that show us as a regional entity and a lease document that says we are committed to this facility for 25 years. We are very committed. We see the Walton Arts Center on Dickson Street as the cornerstone to what we want to do. We have a great vision. We want to make the theater a two theater complex. We have a lot of improvements we want to do. We are in the quiet phase meeting with our major donors. We are committed to do this campaign. That is our primary focus. We hope we can get a new lease that will allow us to say to our donors, we have a commitment, we need to honor it and we are going to fulfill it over the period of the 25 years. We hope to fulfill it in the next three years because our goal is to finish this by 2016 and I think we can. Putting the attachment on the governance I would caution you puts us in a position where our largest donors might not feel that comfort level to be able to give to the campaign.

Alderman Tennant: I can't imagine that some of your donors would think, if their big issue was the governance and we passed it, and they knew that they were giving their money for a Walton Arts Center expansion in Fayetteville anyway, why they would care. Your stated priority was the Dickson Street facility. If 23 million dollars doesn't get it, then come back and say we can't raise 23 million dollars. If we have already given up our governance, you have all the control to do that and it is not fair to the people of Fayetteville. If there was a seven million dollar donor sitting next to you, I believe you would be much more concerned about where they wanted to put their money. They want to put their money in the Fayetteville facility, which you have stated is your priority. I can't imagine you would have a problem with this. I can't imagine the Walton Foundation would have a problem with this because they are getting what they want. You are raising money for this facility and it is your priority, so all this does is assure the people that they get their building.

Peter Lane: There are no assurances in the world of fundraising. I can assure you that when we started this campaign it was well below 20 million dollars. As our wish list grew, as our desire to improve the facility grew, the cost for this project escalated to 23 million dollars. We want to finish everything we need to do. It has to be a partnership with the city because the city is putting their parking deck where our current offices are.

Our top ten donors know about the fact that we are doing governance. Our donors have the confidence that we are running an organization they feel has the right kind of programs, services and impact. We serve the region because our audiences come from all over. Our donors come from all over Northwest Arkansas and we have acted as a regional entity. Fayetteville is our current home and it will remain our cornerstone. In order to assure those donors that we have their confidence, that we can operate as an independent 501(c)(3) and that we can be a regional player, the governance needs to happen to give them confidence.

Alderman Tennant: The governance will happen when everybody does what they said they were going to do and when everyone gets the promises that they were made. Donors already know it is regional. This has nothing to do with that. This has to do with stating as a City of Fayetteville, we absolutely understand that the governance is in the best interest of the region. We do it willingly, just like we have always done. We have always stepped up as a city and said we are the partner. None of it matters except timing. The timing of when you are going to do what you already said you are going to do and I have no doubt you are capable of.

I have been to the AMP and I understand how fantastic of a facility it is. Maybe you can only raise 19 million dollars, but a 19 million dollar renovation to the facility will make it spectacular. Maybe it doesn't give us everything we want and you can come back a year from now and we make an exception, the governance is passed and everything is done. Everybody should be happy.

Peter Lane: The Walton Arts Center will not be happy, neither will the board or the University of Arkansas or our major donors if governance does not pass. Without the ability to secure the donors, I can't raise the money. I need the governance.

Alderman Tennant: I think that is a "you" problem, not an "us" problem.

Alderman Adams requested more information about operating as an independent 501(c)(3).

City Attorney Kit Williams: They do not operate independently. They should operate pursuant to the purposes and powers that we have given them in the Articles of Incorporation when we incorporated the arts center and the lease agreement.

Alderman Gray: I am troubled by what I hear. Is it that you feel like the big donors won't trust that the governance is going to happen or is it the time at which the governance takes place that you think will be their concern? We are the home of the Walton Arts Center. I feel like what I am hearing you say is that the big donors are saying we can't trust the Fayetteville City Council and the decisions they make.

Peter Lane: No, I wasn't saying that and I apologize if that is the impression. That is not my point. I am saying in order to do a capital campaign, our largest donors know that governance has been discussed. Our large donors want to make sure that the governance changes help codify the elements I have shared with you before.

Alderman Gray: I think you need to recognize that we are taking care of the citizens of Fayetteville and the seven million dollars, we need assurances and some guidelines to make sure we get what we have been promised.

Peter Lane: The intent of the Walton Arts Center is to raise as much money of the 23 million dollars and put it into the Fayetteville facility. We have no intention to do anything other than that.

Alderman Petty: I am not comfortable making a vote on this tonight. I feel like we have reached a point where the productivity of this discussion is starting to dwindle.

City Attorney Kit Williams: We don't have a tremendous amount of public here. I think this will get in the news and there will be a lot more input if we wait. I never thought these issues, which I think are very important for Fayetteville, should be decided in one night. With respect to Alderman Tennant, I think Alderman Petty has a good point that we should not move forward with this. This is an important issue and I would like to have more time for the wording.

Alderman Tennant moved to amend the ordinance to delay its effective date. Alderman Long seconded the motion.

Alderman Petty moved to table the amendment to the ordinance to the July 1, 2014 City Council meeting. Alderman Kinion seconded the motion. Upon roll call the motion to table passed unanimously.

Walton Arts Center Council, Inc. Lease: A resolution to approve an amended and restated lease agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant.

City Attorney Kit Williams: Rather than discussing this since it was already a part of the other discussion, I ask the City Council to table this.

Alderman Adams moved to table the resolution to the July 1, 2014 City Council meeting. Alderman Long seconded the motion. Upon roll call the motion to table passed unanimously.

City Council Agenda Session Presentations:

1. "My Fayetteville Services" Presentation by City GIS director Greg Mitchell

City Council Tour: None

Announcements:

Alderman Long: We have a Ward 4 meeting on June 30, 2014 at 6:00 p.m. in Room 111 at City Hall.

Mayor Jordan: We will be attending Arkansas Municipal League conference tomorrow.

Adjournment: 6:35 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

UNOFFICIAL

Alderman Adela Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

Tentative Agenda City of Fayetteville Arkansas City Council Meeting July 01, 2014

A meeting of the Fayetteville City Council will be held on July 01, 2014 at 5:30 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:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the June 17, 2014 City Council meeting minutes.
2. **City Council Workers Compensation Insurance Support:** A resolution to express the City Council's support of a legislative enactment to provide for workers compensation insurance coverage for emergency responders for work-related mental injury or illness.

3. **Bid #14-29 Forsgren, Inc.:** A resolution to award Bid #14-29 and authorize a contract with Forsgren, Inc. in the amount of \$1,242,968.30 for improvements to the Greenland Gravity Sewer Main, to approve a cost share agreement with the City of Greenland in the amount of \$374,806.67, to approve a project contingency of \$125,000.00, and to approve a budget adjustment.

B. Unfinished Business:

1. **Amended Articles of Incorporation for the Walton Arts Center Council and Foundation:** An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

Left on the First Reading

At the June 17, 2014 City Council meeting an amendment to the Amended Articles of Incorporation for the Walton Arts Center Council and Foundation ordinance was not voted on and tabled to the July 1, 2014 City Council meeting.

2. **Walton Arts Center Council, Inc. Lease:** A resolution to approve an Amended and Restated Lease Agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant. ***This resolution was tabled at the June 17, 2014 City Council meeting to the July 1, 2014 City Council meeting.***

C. New Business:

1. **RZN 14-4687 (659 N. Genevieve Ave./Davis):** An ordinance rezoning that property described in rezoning petition RZN 14-4687, for approximately 1.62 acres, located at 659 N. Genevieve Avenue from R-A, Residential-Agricultural to RSF-2, Residential Single Family, 2 units per acre.
2. **RZN 14-4725 (1974 N. Gregg Ave./Gibson):** An ordinance rezoning that property described in rezoning petition RZN 14-4725, for approximately 0.65 acres, located at 1974 N. Gregg Avenue from RSF-4, Residential Single Family, 4 units per acre, to RMF-24, Residential Multi-Family, 24 units per acre.
3. **VAC 14-4740 (514 W. MLK BLVD/Filbeck):** An ordinance approving VAC 14-4740 submitted by Blew and Associates for property located at 514 W. MLK Blvd to vacate an existing utility easement.

D. City Council Agenda Session Presentations:

E. City Council Tour:

F. Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may address the City Council on agenda items of New and Old Business. Please wait for the Mayor to request public comment and then come to the podium, give your name, address, and comments about the agenda item. Please address only the Mayor. Questions are usually answered by the Mayor, Aldermen or Staff after the public comment period is over. Please keep your comments brief and respectful. Each person is only allowed one turn at the microphone for discussion of an agenda item.

All cell phones must be silenced and may not be used within the City Council Chambers.

Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

Agenda additions. A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

Presentations by staff and applicants. Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aids in a City Council meeting as part of their presentation.

Public comments. Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.

Courtesy and respect. All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

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 (479) 575-8330.

A copy of the complete City Council agenda is available at www.fayetteville-ar.gov or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.

City of Fayetteville Item Review Form

2014-0260

Legistar File Number

7-1-2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Mayor Jordan

Submitted By

Administration

Department

Action Required:

A Resolution in support of state legislation which would authorize Workers Compensation Insurance to cover mental injuries and illnesses of emergency responders.

Does this item have a cost? ☐ No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐ No

Budget Adjustment Attached? ☐ No

V20130812

Previous Ordinance or Resolution #

Original Contract Number:

Comments:

 6/16/14

Paul A. Becker 6-16-2014

Don May 6-17-14







CITY COUNCIL AGENDA MEMO

MEETING OF JULY 1, 2014

TO: City Council

FROM: Mayor Lioneld Jordan

DATE: June 10, 2014

SUBJECT: A Resolution in support of state legislation which would authorize Workers Compensation Insurance to cover mental injuries and illnesses of emergency responders.

RECOMMENDATION:

A Resolution for the City Council to support state legislation which would provide for worker compensation insurance coverage for mental injuries and illness of emergency responders.

BACKGROUND:

The City of Fayetteville would like to have our workers compensation insurance that we buy be allowed to cover mental work injuries for emergency responders, but under current law, we are prohibited.

DISCUSSION

Under existing Arkansas law, workers compensation plans cannot cover a proven work-caused mental injury unless the employee also experienced a physical injury at the same time, or the employee is a victim of a crime while acting in the line of duty.

These emergency responders should not have to bear the burden of these injuries by themselves. When these injuries occur due to a work related incident, they should be covered by the worker's compensation law.

BUDGET/STAFF IMPACT:

None

Attachments:

Bill for the 2015 Legislative session authored by Senator Jon Woods.

RESOLUTION NO. _____

**A RESOLUTION TO EXPRESS THE CITY COUNCIL'S SUPPORT OF A
LEGISLATIVE ENACTMENT TO PROVIDE FOR WORKERS
COMPENSATION INSURANCE COVERAGE FOR EMERGENCY
RESPONDERS FOR WORK-RELATED MENTAL INJURY OR ILLNESS**

WHEREAS, under current Arkansas law, workers compensation plans cannot cover a proven work-related mental injury or illness unless the employee also experienced a physical injury at the same time, or if the employee is a victim of a crime while acting in the line of duty; and

WHEREAS, emergency responders should have the benefit of workers compensation coverage for mental injuries or illnesses when they occur due to a work-related incident.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses its support of a legislative enactment to provide for workers compensation insurance coverage for mental injury or illness for emergency responders when those mental injuries or illnesses occur due to a work-related incident.

PASSED and APPROVED this 1st day of July, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4
5 By: Senator J. Woods
6

A Bill

ANS/ANS
SENATE BILL

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR THE COMPENSABILITY OF MENTAL
9 INJURY OR ILLNESS FOR EMERGENCY RESPONDERS; TO AMEND
10 A PORTION OF THE ARKANSAS CODE WHICH RESULTED FROM
11 INITIATED ACT 4 OF 1948; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO PROVIDE FOR THE COMPENSABILITY OF
16 MENTAL INJURY OR ILLNESS FOR EMERGENCY
17 RESPONDERS AND TO AMEND A PORTION OF THE
18 ARKANSAS CODE WHICH RESULTED FROM
19 INITIATED ACT 4 OF 1948.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 11-9-113(a)(1), concerning compensability
25 of mental injury or illness, is amended to read as follows:

26 11-9-113. Mental injury or illness.

27 (a)(1) A mental injury or illness is not a compensable injury unless
28 it is caused by physical injury to the employee's body, and shall not be
29 considered an injury arising out of and in the course of employment or
30 compensable unless it is demonstrated by a preponderance of the evidence;
31 provided, however, that this physical injury limitation shall not apply to
32 any victim of a crime of violence or as provided by § 11-9-119.
33

34 SECTION 2. Arkansas Code Title 11, Chapter 9, Subchapter 1, is amended
35 to add an additional section to read as follows:

36 11-9-119. Mental injury or illness -- Emergency responder.

DRAFT

01-15-2014 16:08:51 ANS256

SB

1 (a) As used in this section:

2 (1) "Disaster" means a tornado, storm, flood, high water,
3 earthquake, fire, radiological incident, air or surface-borne toxic or other
4 hazardous material contamination, or other emergency, whether manmade or
5 resulting from natural causes;

6 (2)(A) "Emergency" means an unforeseen circumstance, occurrence,
7 or condition, whether man-made or resulting from natural causes.

8 (B) "Emergency" includes without limitation:

9 (i) An accident involving a motor vehicle or another
10 mode of transportation;

11 (ii) A disaster; or

12 (iii) The scene of a criminal act or crime of
13 violence; and

14 (3)(A) "Emergency responder" means an employee who:

15 (i) Is authorized in the course of his or her
16 employment to respond or assist in a disaster or emergency;

17 (ii) Is acting in an assigned role in public safety
18 and emergency services; and

19 (iii) Responds to the scene of a disaster or an
20 emergency.

21 (B) "Emergency responder" may include without limitation:

22 (i) Law enforcement officers; and

23 (ii) Firefighters.

24 (b) For purposes of this section and the payment of workers'
25 compensation benefits, an emergency responder is considered to be an employee
26 of the emergency responder's employer as provided by § 12-75-129.

27 (c) A mental injury or illness of an emergency responder is considered
28 a compensable injury under this section if:

29 (1) By a preponderance of the evidence the injury is
30 demonstrated to be arising out of and in the course of the emergency
31 responder's employment;

32 (2) It is diagnosed by a licensed psychiatrist or psychologist;
33 and

34 (3) The diagnosis meets the criteria established in the most
35 current issue of the Diagnostic and Statistical Manual of Mental Disorders.

36 (d) Before filing a workers' compensation claim for mental injury or

SB

1 illness under this section, an emergency responder shall participate in at
2 least one (1) employee assistance program that provides counseling services
3 if offered by his or her employer.

4 (e) Notwithstanding any other provision of this chapter, a claim for
5 mental injury or illness is limited to twenty-six (26) weeks of disability
6 benefits.

7 (f) If death results directly from the mental injury or illness of an
8 emergency responder, compensation shall be paid to his or her dependents as
9 provided in other death cases under this chapter.

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UTILITIES DEPARTMENT

City Council Meeting of July 1, 2014

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
Tim Nyander, Acting Utilities Director
Fayetteville Water and Sewer Committee

From: Lynn Hyke, Construction and Contact Manager

Date: June 2, 2014

Subject: Resolution approving a construction contract with Forsgren, Inc. of Fort Smith, AR. For \$1,242,968.30, Bid 14-29, Construction-Gravity Sewer Improvements Greenland. The budget adjustment transfers funds from Sanitary Sewer Rehabilitation fund for City portion that will also cover contingency of \$125,000. Approving Cost Share Agreement with City of Greenland for \$374,806.67.

RECOMMENDATION

Fayetteville City Staff recommends approval of a construction contract with Forsgren, Inc. for \$1,242,968.30, Bid 14-29, with a contingency of \$125,000 to construct Gravity Sewer Improvements Greenland Main Replacement, and a budget adjustment. Approve cost share agreement with City of Greenland for \$374,806.67.

BACKGROUND

Replacement of approximately 4,600 feet of existing 10-inch gravity sewer line with 15-inch and 18-inch gravity sewer line using open cut and approximately 4,400 of existing 6-inch and 8-inch gravity sewer line using 8-inch pipe reaming method. The existing sewer lines replacement is required to increase the needed capacity and to reduce the infiltration and inflow of storm water into the sewer system. A portion of the project will be funded with STAG grant and Greenland cost share contract.

DISCUSSION

Under this contract, we will replace approximately 9,000 feet of sewer line. The sewer line serves as primary sewer main from Greenland. The City opened bids on May 30, 2014.

Forsgren Incorporated	\$1,242,968.30
Goodwin & Goodwin Inc.	\$1,544,650.00
TG Excavating Inc.	\$1,505,555.00

Staff reviewed the bids and recommends awarding the contract to Forsgren Inc. Construction will begin this summer and will be completed early next year.

BUDGET IMPACT

Funds are available in the Sanitary Sewer Rehabilitation fund. 2009 STAG grant and Greenland cost share contract will also be utilized for this project.

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #14-29 AND AUTHORIZE A CONTRACT WITH FORSGREN, INC. IN THE AMOUNT OF \$1,242,968.30 FOR IMPROVEMENTS TO THE GREENLAND GRAVITY SEWER MAIN, TO APPROVE A COST SHARE AGREEMENT WITH THE CITY OF GREENLAND IN THE AMOUNT OF \$374,806.67, TO APPROVE A PROJECT CONTINGENCY OF \$125,000.00, AND TO APPROVE A BUDGET ADJUSTMENT

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #14-29, authorizes a contract with Forsgren, Inc. in the amount of \$1,242,968.30 for improvements to the Greenland Gravity Sewer Main, approves a cost share agreement with the City of Greenland in the amount of \$375,806.67, and further approves a project contingency in the amount of \$125,000.00.

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

PASSED and APPROVED this 1st day of July, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

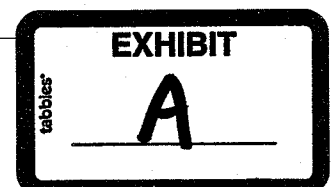
A. 3
Bid #14-29 Forsgren, Inc.
Page 4 of 26

Budget Year	Division: Utilities Director	Adjustment Number
2014	Dept.: Utilities	
	Requestor: Cheryl Partain	

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

A BA is needed within the Sanitary Sewer Rehabilitation Project for the construction costs for the Greenland Sanitary Sewer Rehabilitation project. The Greenland project is for replacement of approximately 4,600 feet of existing 6-inch and 8-inch gravity sewer lines using 8-inch pipe reaming method. Replacement of existing sewer lines is required to increase the needed capacity and to reduce the infiltration and inflow of storm water into the sewer system.

	COUNCIL DATE:	7/1/2014
	LEGISTAR FILE ID#:	2014-0270
	Kevin Springer	
	6/13/2014 4:22 PM	
	Budget Director	Date
	TYPE:	
	DESCRIPTION:	
	GLDATE:	
	POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]

City Of Fayetteville (Not a Purchase Order)						Requisition No.: P.O Number:	Date: 6/13/2014 A. 3 Bid #14-29 Forsgren, Inc. Expected Delivery Date: Page 5 of 26			
Vendor #: 13830		Vendor Name: Forsgren, Inc.				Mail Yes: <u>X</u> No: _____				
Address: PO Box 368					Fob Point:		Taxable Yes: _____ No: _____		Quotes Attached Yes: _____ No: _____	
City: Fort Smith		State: AR		Zip Code: 72902		Ship to code:		Divison Head Approval:		
Requester: Cheryl Partain					Requester's Employee #: 2548		Extension: 8224			
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers		Project/Subproject #	Inventory #	Fixed Asset #
1	Greenland Sewer Rehabilitation - Per Bid 14-29 - This is a Grant -	1	EA	1,242,968.30	1,242,968.30	5400.5700.5815.00		02017.1201		
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: \$1,242,968.30 Tax: \$0.00 Total: \$1,242,968.30				
Approvals:										
Mayor: _____		Department Director: _____				Purchasing Manager: _____				
Finance & Internal Services Director: _____		Budget Manager: _____				IT Manager: _____				
Dispatch Manager: _____		Utilities Manager: _____				Other: _____				



**AGREEMENT BETWEEN
CITY OF FAYETTEVILLE AND FORSGREN INCORPORATED
Reference: Bid 14-29, Construction – Gravity Sewer Improvements, Greenland**

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20____ by and between the **CITY OF FAYETTEVILLE** and **FORSGREN INCORPORATED**.

1. **FORSGREN INCORPORATED** shall commence and complete all Work as specified or indicated in the Contract Documents. The **WORK** is generally described as follows:

GRAVITY SEWER IMPROVEMENTS - GREENLAND

2. **FORSGREN INCORPORATED** shall furnish all materials, supplies, tools, equipment, labor and other service necessary for the completion of the **WORK** described herein.
3. **FORSGREN INCORPORATED** shall commence the **WORK** required by the **CONTRACT DOCUMENTS** on or before a date to be specified in the **NOTICE TO PROCEED** and completed and ready for final payment within **180** calendar days. The **FORSGREN INCORPORATED** shall pay the **CITY OF FAYETTEVILLE**, as liquidated damages, the sum of **\$500** for each calendar day thereafter that the **WORK** is not complete.
4. **FORSGREN INCORPORATED** agrees to perform all of the **WORK** described in the **CONTRACT DOCUMENTS** and comply with the terms therein as shown in the **BID PROPOSAL**.
5. The term **CONTRACT DOCUMENTS** shall mean and include the following:
 - 5.1 Invitation to Bid
 - 5.2 Information for Bidders
 - 5.3 Supplemental Information for Bidders
 - 5.4 Bid Form
 - 5.5 Bid Bond
 - 5.6 Agreement Between City of Fayetteville and **FORSGREN INCORPORATED**
 - 5.7 Performance and Payment Bond
 - 5.8 General Conditions
 - 5.9 Prevailing Wage Rates
 - 5.10 Notice of Award
 - 5.11 Notice to Proceed
 - 5.12 Project Manual

- 5.13 Addenda Number **01**
- 5.14 Change Orders

6. The **CITY OF FAYETTEVILLE** shall pay **FORSGREN INCORPORATED** in the manner and at such times as set forth in the General Conditions such amounts as required by the **CONTRACT DOCUMENTS**.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

8. **MISCELLANEOUS**

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. City of Fayetteville and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

8.6. **Freedom of Information Act.** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

8.7. This contract must be interpreted under Arkansas Law.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and FORSGREN INCORPORATED have signed this Agreement in quadruplicate. One counterpart each has been delivered to City of Fayetteville and Engineer, and two counterparts have been delivered to Contractor. All portions of the Contract Documents have been signed, initialed, or identified by City of Fayetteville and Contractor or identified by Engineer on their behalf.

OWNER

CITY OF FAYETTEVILLE

BY _____

Signature

Mayor Lioneld Jordan

Printed Name & Title

[CORPORATE SEAL]

ATTEST _____

Signature

Printed Name & Title

Address for giving notices:

113 W. Mountain
Fayetteville, AR 72701

FORSGREN INCORPORATED

BY _____

Signature

STEVE FORSGREN, PRESIDENT
Printed Name & Title

[CORPORATE SEAL]

ATTEST _____

Signature

VIC BRADY, VICE-PRESIDENT
Printed Name & Title

Address for giving notices:

3000 NORTH 23RD STREET
FORT SMITH, AR 72904

License No. 0036900415

Agent for service of process: _____

STEVEN V. FORSGREN

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

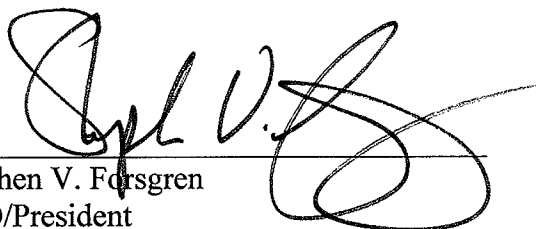
RESOLUTION

We, Stephen V. Forsgren, CEO/President, and Cleve J. McDonald, Jr., Secretary/CFO, of Forsgren, Incorporated, duly organized and existing under the laws of the state of Arkansas, do hereby certify that the following is a true and correct copy of a resolution duly adopted by the Board of Directors of said corporation at a meeting thereof duly called and held on the 8th day of September, 2011. That said resolution has been duly entered on the Minute Book of this corporation.

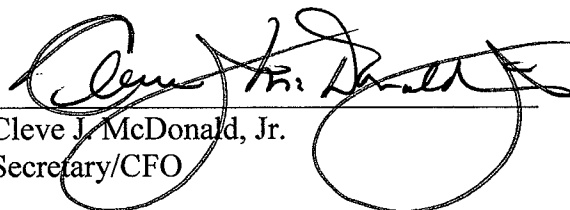
“RESOLVED, that the Company authorizes and directs the following officers to execute on behalf of the Company any and all documents required to enter into construction agreements or contracts:

Stephen V. Forsgren	President/CEO
Dallas B. Forsgren	Chief Operating Officer
Cleve J. McDonald, Jr.	Secretary/CFO
Vic Braddy	Executive Vice-President
Kevin K. Kelton	Vice-President – Operations
C. Justin Forsgren	Vice-President – Finance”

In witness thereof, we have hereunto set our hands this the 8th day of September, 2011.



Stephen V. Forsgren
CEO/President



Cleve J. McDonald, Jr.
Secretary/CFO



BID: 14-29
 DATE: 05-30-14
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 14-29, Construction - Gravity Sever Improvements Greenland

	Item Description	Approx Qty	Unit	Forsgren Incorporated		Goodwin & Goodwin Inc		TG Excavating Inc	
				Unit Price	TOTAL BASE BID	Unit Price	TOTAL BASE BID	Unit Price	TOTAL BASE BID
1	Mobilization - shall not exceed 5% of bid	1	LS	\$ 62,000.00	\$ 62,000.00	\$ 55,000.00	\$ 55,000.00	\$ 75,000.00	\$ 75,000.00
2	Trench & Safety Systems	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 60,000.00	\$ 60,000.00	\$ 25,000.00	\$ 25,000.00
3	Erosion Control	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
4	Site Restoration	1	LS	\$ 75,000.00	\$ 75,000.00	\$ 50,000.00	\$ 50,000.00	\$ 53,310.00	\$ 53,310.00
5	18" PVD (PS 115) Gravity Sewer Pipe	1237	LF	\$ 70.25	\$ 86,899.25	\$ 98.00	\$ 121,226.00	\$ 120.00	\$ 148,440.00
6	15" SDR-26 PVC, Gravity Sewer Pipe	3399	LF	\$ 55.00	\$ 186,945.00	\$ 76.00	\$ 258,324.00	\$ 105.00	\$ 356,895.00
7	Install 30" Steel Encasement Pipe, Jack & Bore	200	LF	\$ 650.00	\$ 130,000.00	\$ 525.00	\$ 105,000.00	\$ 400.00	\$ 80,000.00
8	Install 24" Steel Encasement Pipe, Open Cut	20	LF	\$ 125.00	\$ 2,500.00	\$ 150.00	\$ 3,000.00	\$ 180.00	\$ 3,600.00
9	Install 16" Steel Encasement Pipe, Open Cut	20	LF	\$ 95.00	\$ 1,900.00	\$ 125.00	\$ 2,500.00	\$ 160.00	\$ 3,200.00
10	Sewer Service Reinstatement	10	EA	\$ 800.00	\$ 8,000.00	\$ 1,000.00	\$ 10,000.00	\$ 400.00	\$ 4,000.00
11	Sewer Service Laterals	120	LF	\$ 25.00	\$ 3,000.00	\$ 25.00	\$ 3,000.00	\$ 10.00	\$ 1,200.00
12	Standard Manhole, 4' Dia. 0'-6'	21	EA	\$ 3,500.00	\$ 73,500.00	\$ 3,300.00	\$ 69,300.00	\$ 5,000.00	\$ 105,000.00
13	Standard Manhole, 4' Dia. Extra Depth	50	VF	\$ 220.00	\$ 11,000.00	\$ 250.00	\$ 12,500.00	\$ 400.00	\$ 20,000.00
14	Standard Manhole, 5' Dia. 0'-6'	2	EA	\$ 4,800.00	\$ 9,600.00	\$ 4,500.00	\$ 9,000.00	\$ 6,500.00	\$ 13,000.00
15	Standard Manhole, 5' Dia. Extra Depth	15	VF	\$ 300.00	\$ 4,500.00	\$ 300.00	\$ 4,500.00	\$ 525.00	\$ 7,875.00
16	Standard Manhole, 6' Dia 0'-6'	1	EA	\$ 5,600.00	\$ 5,600.00	\$ 6,000.00	\$ 6,000.00	\$ 7,500.00	\$ 7,500.00
17	Standard Manhole, 6' Dia Extra Depth	3	VF	\$ 400.00	\$ 1,200.00	\$ 400.00	\$ 1,200.00	\$ 650.00	\$ 1,950.00
18	Manhole ConShield Treatment	200	VF	\$ 100.00	\$ 20,000.00	\$ 45.00	\$ 9,000.00	\$ 1.00	\$ 200.00
19	Manhole, Existing, Abandon or Remove	21	EA	\$ 425.00	\$ 8,925.00	\$ 800.00	\$ 16,800.00	\$ 250.00	\$ 5,250.00
20	Core Drill and Connect to Existing Lift Station	1	EA	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00

21	Connect to Existing Sewer at MH - 16	1	EA	\$ 2,500.00	\$ 2,500.00	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00
22	8" SDR 26-PVC, Gravity Sewer Pipe	129	LF	\$ 35.00	\$ 4,515.00	\$ 65.00	\$ 8,445.00	\$ 95.00	\$ 12,255.00
23	8" DR-17 HDPE, Pipe Bursting	4391	LF	\$ 74.55	\$ 327,349.05	\$ 115.00	\$ 504,965.00	\$ 90.00	\$ 395,190.00
24	Install 16" Steel Encasement Pipe, Open Cut	20	LF	\$ 95.00	\$ 1,900.00	\$ 125.00	\$ 2,500.00	\$ 160.00	\$ 3,200.00
25	Sewer Service Reinstatement	50	EA	\$ 1,250.00	\$ 62,500.00	\$ 1,000.00	\$ 50,000.00	\$ 900.00	\$ 45,000.00
26	Sewer Service Laterals	480	LF	\$ 26.50	\$ 12,720.00	\$ 25.00	\$ 12,000.00	\$ 10.00	\$ 4,800.00
27	Standard Manhole, 4' Dia 0'-6'	6	EA	\$ 2,500.00	\$ 15,000.00	\$ 3,300.00	\$ 19,800.00	\$ 3,000.00	\$ 18,000.00
28	Standard Manhole, 4' Dia Extra Depth	50	VF	\$ 135.00	\$ 6,750.00	\$ 250.00	\$ 12,500.00	\$ 1.00	\$ 50.00
29	Remove and Replace Manhole Frame and cover	22	EA	\$ 800.00	\$ 17,600.00	\$ 875.00	\$ 19,250.00	\$ 1,000.00	\$ 22,000.00
30	Manhole, Existing, Abandon or Remove	2	EA	\$ 425.00	\$ 850.00	\$ 800.00	\$ 1,600.00	\$ 250.00	\$ 500.00
31	Asphalt Pavement Repair	100	LF	\$ 40.00	\$ 4,000.00	\$ 115.00	\$ 11,500.00	\$ 100.00	\$ 10,000.00
32	Concrete Pavement Repair	100	SY	\$ 35.00	\$ 3,500.00	\$ 85.00	\$ 8,500.00	\$ 40.00	\$ 4,000.00
33	Gravel Pavement Repair	300	LF	\$ 6.50	\$ 1,950.00	\$ 20.00	\$ 6,000.00	\$ 30.00	\$ 9,000.00
34	Mitigation Dam, As directed by engineer	5	EA	\$ 325.00	\$ 1,625.00	\$ 800.00	\$ 4,000.00	\$ 600.00	\$ 3,000.00
35	Additional Trench Bedding	500	CY	\$ 25.00	\$ 12,500.00	\$ 15.00	\$ 7,500.00	\$ 1.00	\$ 500.00
36	Acceptance Inspection by CCTV	9160	LF	\$ 4.00	\$ 36,640.00	\$ 5.00	\$ 45,800.00	\$ 4.00	\$ 36,640.00
37	Construction Photographs	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 3,000.00	\$ 3,000.00	\$ 500.00	\$ 500.00
TOTAL BID AMOUNT					\$ 1,242,968.30		\$ 1,544,650.00		\$ 1,505,555.00

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

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

RESOLUTION NO. 06-09-2014 A

A RESOLUTION TO APPROVE THE COST-SHARE AGREEMENT WITH THE CITY OF FAYETTEVILLE FOR THE REPLACEMENT OF THE SEWER MAIN INTERCEPTOR FROM THE EXISTING LIFT STATION TO LETITA AVENUE

WHEREAS, the City of Fayetteville caused an assessment of critical capital needs for the Greenland Sewer System to be performed by RJN Group; and

WHEREAS, RJN Group determined that replacement of the gravity sewer interceptor from the existing lift station to Letita Avenue was necessary to increase the total capacity of Greenland Sewer Collection System; and

WHEREAS, the City of Fayetteville has requested Greenland to consider cost-sharing of this project with Fayetteville in the amount of \$374,806.67 at the time of invoicing; and

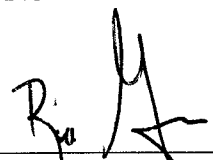
WHEREAS, the City of Greenland has agreed to cost share \$374,806.67 with the City of Fayetteville for its share of the estimated cost of \$1,242,986.30 to construct the replacement Sewer Main Interceptor.

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

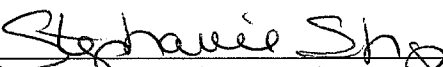
Section 1: That the City Council of the City of Greenland, Arkansas hereby approves the Cost Share Agreement with the City of Fayetteville to pay Fayetteville \$374,806.67 at the time of invoicing for the replacement of the gravity sewer interceptor from the existing lift station to Letita Avenue conditioned on Fayetteville performing the work to replace the sewer main interceptor and authorizes Mayor Bill Groom to sign the attached Cost-Share Agreement.

PASSED and APPROVED this 9^h day of June 2014.

APPROVED:

By: 
BILL GROOM, Mayor

ATTEST:

By: 
STEPHANIE SHARP, Recorder/Treasurer

COST-SHARE AGREEMENT

Between

City of Greenland and City of Fayetteville
to Replace the Sewer Main Interceptor from
the existing Sewer Lift Station to Letita Avenue

The City of Greenland, Arkansas and the City of Fayetteville, Arkansas in order to finance and construct the necessary replacement for the existing sewer main with a new **Sewer Main Interceptor** from the existing sewer lift station to Letita Avenue mutually agree, promise and covenant as follows:

- (1) Pursuant to Resolution No. 03-10-2014 and Resolution No. 06-09-2014A, the City of Greenland promises to promptly pay to the City of Fayetteville, upon Fayetteville's written invoice for work done, the sum of Three Hundred Seventy Four Thousand Eight Hundred and Six Dollars and sixty seven cents (\$374,806.67) as Greenland's share of this Greenland Sewer Rehab Project which is estimated to cost One Million Two Hundred Forty Two Thousand Nine Hundred Sixty Eight Dollars and thirty cents (\$1,242,968.30).
- (2) The City of Fayetteville agrees to bill the City of Greenland for invoiced work and to accept the \$374,806.67 payment from the City of Greenland and to use sufficient amounts of Fayetteville's own funds and grant funds to pay for the construction of the necessary **Sewer Main Interceptor** from the existing sewer lift station to Letita Avenue as part of the Greenland Sewer Rehab Project.
- (3) Both Cities agree to do all thing necessary to accomplish the timely and successful completion of the Sewer Main Interceptor Construction Project.

CITY OF GREENLAND

By: Bill Groom

BILL GROOM, Mayor

ATTEST:

By: Stephanie Sharp
Stephanie Sharp, Recorder/Treasurer

CITY OF FAYETTEVILLE

By: _____

LIONELD JORDAN, Mayor

ATTEST:

By: _____
Sondra E. Smith, City Clerk/Treasurer

Date: 6/9/14

Date: _____

RESOLUTION NO. 209-09

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.

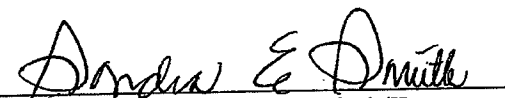
Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment recognizing the grant revenue.

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

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

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
Submitted By

Utilities
Division

Water/Wastewater
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)
Cost of this request

\$ 3,470,013.00
Category / Project Budget

Sanitary Sewer Rehabilitation
Program Category / Project Name

5400.5700.5815.00
Account Number

\$ 640,774.09
Funds Used to Date

Sewer Main Construction
Program / Project Category Name

02017, 1271
Project Number

\$ 2,829,238.91
Remaining Balance

Water/Sewer
Fund Name

Budgeted Item

☐

Budget Adjustment Attached

XX

Department Director

18 Sep 09
Date

Previous Ordinance or Resolution # 144-09

Original Contract Date: 7/7/2009

Original Contract Number: N/A

City Attorney

9/21/09
Date

Finance and Internal Services Director

9/22/09
Date

Received in City
Clerk's Office

9/18/09

Chief of Staff

9-22-09
Date

Received in
Mayor's Office

9/21/09

Mayor

9/22/09
Date

Comments:



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

A handwritten signature in black ink, appearing to read "D. Jurgens", written over the "From:" line.

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.

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 they 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 Nekeosha, 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, Arkansas
Budget Adjustment Form**

A. 3
Bid #14-29 Forsgren, Inc.
Page 21 of 26

Budget Year 2009	Department: Operations Division: Water & Sewer Maintenance Program: Sewer Mains Construction	Date Requested 9/18/2009	Adjustment Number
-------------------------	--	---------------------------------	-------------------

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		Amount		Project Number	
Account Name	Account Number				
Sewer Improvements	5400 5700 5815 00	291,000		02017	0910

Decrease Budget		Amount		Project Number	
Account Name	Account Number				
Federal Grants - Capital	5400 0940 4309 00	291,000		02017	0910

V.090403

Division Head	Date
	9/18/09
Budget Director	Date
	18 Sep 09
Department Director	Date
	9/22/09
Finance Director	Date
	9-22-09
Chief of Staff	Date
	9/24/09
Mayor	Date

Budget & Research Use Only

Type: A B C D E

Requested By _____

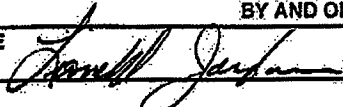
General Ledger Date _____

Posted to General Ledger Initial _____ Date _____

Posted to Project Accounting Initial _____ Date _____

STAG 09

XP - 00F26701 - 0 Page 1

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		ASSISTANCE ID NO.			DATE OF AWARD 09/20/2010	
			PRG	DOC ID	AMEND#		
			XP - 00F26701 - 0				
			TYPE OF ACTION New			MAILING DATE 09/27/2010	
PAYMENT METHOD: ACH			ACH# 66890				
RECIPIENT TYPE: Municipal			Send Payment Request to: Las Vegas Finance Center				
RECIPIENT:			PAYEE:				
City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701 EIN: 71-6018462			City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701				
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST			
David Jurgens 113 West Mountain Street Fayetteville, AR 72701 E-Mail: djurgens@ci.fayetteville,ar.us Phone: 479-575-8318		Gene Wossum 1445 Ross Avenue, Suite 1200, (6WQ-AP) Dallas, TX 75202-2733 E-Mail: Wossum.Gene@epamail.epa.gov Phone: 214-665-7173		Sharon Beets Grant Programs Section, (6MD-CG) E-Mail: Beets.Sharon@epamail.epa.gov Phone: 214-665-2207			
PROJECT TITLE AND DESCRIPTION City of Fayetteville FY2009 SAPP (Sanitary Sewer Reh) Rehabilitation of sanitary sewer manholes and sewer lines identified in the Sanitary Sewer Evaluation Survey (SSES) that is currently underway in south central Fayetteville and Greenland.							
BUDGET PERIOD 10/01/2010 - 12/31/2014		PROJECT PERIOD 10/01/2010 - 12/31/2014		TOTAL BUDGET PERIOD COST \$529,091.00		TOTAL PROJECT PERIOD COST \$529,091.00	
NOTICE OF AWARD							
Based on your application dated 12/31/2014, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$291,000. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$291,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.							
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)				AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS				ORGANIZATION / ADDRESS			
Grant Programs Section, 6MD-CG 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733				U.S. EPA, Region 6 Water Quality Protection Division (6WQ) 1445 Ross Avenue, Suite 1200 Dallas, TX 75202-2733			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY							
SIGNATURE OF AWARD OFFICIAL		TYPED NAME AND TITLE			DATE		
Digital signature applied by EPA Award Official		Donna Miller, Chief Grant Programs Section			09/20/2010		
AFFIRMATION OF AWARD							
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION							
SIGNATURE		TYPED NAME AND TITLE			DATE		
		Lioneld Jordan, Mayor			10/27/10		

* Call Ellen Brasier @ EPA to
Get new ACH #

EPA Funding Information

XP - 00F26701 - 0 Page 3

Approved Budget	
Program Element Classification (Construction)	Approved Allowable Budget Period Cost
1. Administration Expense	\$0
2. Preliminary Expense	\$0
3. Land Structure, Right Of Way	\$0
4. Architectural Engineering Basic Fees	\$0
5. Other Architectural Engineering Fees	\$0
6. Project Inspection Fees	\$0
7. Land Development	\$0
8. Relocation Expenses	\$0
9. Relocation Payments to Individuals & Bus.	\$0
10. Demolition and Removal	\$0
11. Construction and Project Improvement	\$529,091
12. Equipment	\$0
13. Miscellaneous	\$0
14. Total (Lines 1 thru 13)	\$529,091
15. Estimate Income	\$0
16. Net Project Amount (Line 14 minus 15)	\$529,091
17. Less: Ineligible Exclusions	\$0
18. Add: Contingencies	\$0
19. Total (Share: Recip 45.00% Fed 55.00%)	\$529,091
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$291,000



UTILITIES DEPARTMENT

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
Tim Nyander, Acting Utilities Director
Fayetteville Water and Sewer Committee

From: Lynn Hyke, Construction and Contact Manager

Date: June 2, 2014

Subject: Resolution approving a construction contract with Forsgren, Inc. of Fort Smith, AR. For \$1,242,968.30, Bid 14-29, Construction-Gravity Sewer Improvements Greenland. The budget adjustment transfers funds from Sanitary Sewer Rehabilitation fund for City portion that will also cover contingency of \$125,000. Approving Cost Share Agreement with City of Greenland for \$374,806.67.

RECOMMENDATION

Fayetteville City Staff recommends approval of a construction contract with Forsgren, Inc. for \$1,242,968.30, Bid 14-29, with a contingency of \$125,000 to construct Gravity Sewer Improvements Greenland Main Replacement, and a budget adjustment. Approve cost share agreement with City of Greenland for \$374,806.67.

BACKGROUND

Replacement of approximately 4,600 feet of existing 10-inch gravity sewer line with 15-inch and 18-inch gravity sewer line using open cut and approximately 4,400 of existing 6-inch and 8-inch gravity sewer line using 8-inch pipe reaming method. The existing sewer lines replacement is required to increase the needed capacity and to reduce the infiltration and inflow of storm water into the sewer system. A portion of the project will be funded with STAG grant and Greenland cost share contract.

DISCUSSION

Under this contract, we will replace approximately 9,000 feet of sewer line. The sewer line serves as primary sewer main from Greenland. The City opened bids on May 30, 2014.

Forsgren Incorporated	\$1,242,968.30
Goodwin & Goodwin Inc.	\$1,544,650.00
TG Excavating Inc.	\$1,505,555.00

Staff reviewed the bids and recommends awarding the contract to Forsgren Inc. Construction will begin this summer and will be completed early next year.

BUDGET IMPACT

Funds are available in the Sanitary Sewer Rehabilitation fund. 2009 STAG grant and Greenland cost share contract will also be utilized for this project.

City of Fayetteville Item Review Form

2014-0245

Legistar File Number

06/17/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Don Marr

Submitted By

Mayor's Office

Department

Action Required:

An Ordinance to approve the amended Governance documents (Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc. and the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.)

Does this item have a cost? ☐ No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution #

Original Contract Number:



Comments:

[Signature] June 3, 2014

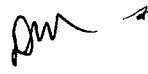
[Signature] June 3, 2014
[Signature]
Paul A. Bech 6-4-2014

This ordinance was left on the first
reading on the June 17, 2014
City Council Meeting

STAFF MEMO

TO: City Council Members

THRU: Mayor Jordan 
Kit Williams, City Attorney 

FROM: Don Marr, Chief of Staff 

DATE: May 30, 2014

SUBJECT: 2014-0245 New Inter-local Agreement with U of A, Governance Documents for Walton Arts Center

RECOMMENDATION:

Staff recommends approval of the New Interlocal Agreement with U of A, Governance Documents for the Walton Arts Center Council Inc.

BACKGROUND:

See the City Attorney Memo dated May 15th, 2014 for the history and specific details of this request. The Memo is attached within this packet to this Staff Memo for the Agenda Item

DISCUSSION:

Pulled excerpts from the City Attorney Memo of 5/15/2014:

The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.

- (A) Removes the designation that the Council is agent of the University and City;
- (B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus;
- (C) Preserves the current level of performances at the Walton Arts Center on Dickson;
- (D) Preserves the City and University's power to appoint five (5) members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be "self-appointed" by the other board members.All members of the board of Directors should then be responsible and hopefully responsive to the U of A, the City, or the Walton Family Foundation.

The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.

- (A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility , Rogers AMP, etc.

- (B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City, to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.
- (C) Removes the never used power of the U of A Chancellor or the Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council

BUDGET/STAFF IMPACT:

There is no staff or additional budgetary impact from this governance change

Attachments:

City Attorney Memo May 15, 2014

Walton Arts Center Council, Inc Memorandum May 30, 2014

New Inter-local Agreement

- Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc.
- Fifth Amendment of the Articles of Incorporation of the Walton Arts Center Foundation Inc.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

**TO: Mayor Jordan
City Council**

**CC: Don Marr, Chief of Staff
Paul Becker, Finance Director**

FROM: Kit Williams, City Attorney

DATE: May 15, 2014

**RE: New Interlocal Agreement with U of A, Governance Documents for
Walton Arts Center, and Lease**

INITIAL MEETINGS

About a year ago, representatives from the Walton Arts Center met with Mayor Jordan and requested a very significant change in how the Walton Arts Center would be governed and managed. Mayor Jordan could not agree to this initial proposal which would have removed most of the City's power and authority. However, he wanted to work with our most generous partner, the Walton Family Foundation, in an effort to preserve the Walton Arts Center's vitality, usefulness, and activity that is so important to our Entertainment District and the quality of life for Fayetteville. This goal to preserve the Walton Arts Center's viability has been our constant lodestar through a year of negotiations.

We then had a meeting with the Chancellor, the U of A Legal Counsel Scott Varady, the Chair of the Walton Arts Center Council (Greg Lee) and other members of the WAC Council including Jeff Gearhart. With its planned expansion into Bentonville to build a larger Arts Center

auditorium and its movement of the Arkansas Music Pavilion into Rogers, the Walton Arts Center, Inc. needed to change its Articles of Incorporation to broaden its allowed purposes which are currently limited to solely operating and maintaining the Walton Arts Center on Dickson Street.

Mayor Jordan then met with representatives of the Walton Family Foundation who expressed their desire and willingness to help our Walton Arts Center in Fayetteville to continue to thrive, but wished that the WAC Council and WAC Foundation would no longer be denoted as "agents" of the City or University. By law, an agent owes its principals (the City and University) a fiduciary duty of utmost good faith and loyalty. The Walton Arts Center staff and the Walton Family Foundation were concerned that the City or University might someday try to exercise our rights as principals to hinder its planned expansion out of Fayetteville into Bentonville and Rogers.

PRINCIPAL GOALS OF THE CITY

Mayor Jordan was willing to accommodate the desires of the Walton Family Foundation (as the Walton Arts Center's major regular donor) and the Walton Arts Center Council if we received enforceable assurances and commitments to preserve the Dickson Street Walton Arts Center in a manner similar to its use of the last few years. In other words, we believed we should receive legal commitments that once a new and larger facility was constructed in Bentonville, the Walton Arts Center on Dickson Street would not be relegated to second class status without Broadway musicals, etc.

NEGOTIATIONS WITH WALTON ARTS CENTER AND U OF A ATTORNEYS

I met with and worked for several months with U of A Counsel Scott Varady and Walton Arts Center, Inc.'s Counsel Marshall Ney to try to meet everyone's expectations and goals. I consulted frequently with Mayor Jordan and Chief of Staff Don Marr to ensure the proposed changes to the Articles of Incorporation of Walton Arts Center Council, Inc., the Articles of Incorporation of the Walton Arts Center Foundation, Inc., their By Laws,

the U of A and City Interlocal Cooperation Agreement, and the new Lease Agreement were acceptable and headed in the right direction.

Please keep in mind that all documents were the result of careful and thoughtful negotiations and compromises. None of the interested parties: (1) The City of Fayetteville; (2) University of Arkansas; (3) Walton Arts Center Council, Inc.; (4) Walton Arts Center Foundation, Inc. or (5) Walton Family Foundation could just dictate a final agreement. We all had to honor each party's legitimate and reasonable concerns. I can now report to you that I believe we have achieved a balanced agreement that satisfies the concerns and wishes of all parties and protects our Walton Arts Center.

SUMMARY OF IMPORTANT CHANGES

(1) The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.

(A) Removes the designation that the Council is agent of the University and City.

(B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus.

(C) Preserves the current level of performances at the Walton Arts Center on Dickson with the following language:

"To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is

met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs."

(D) Preserves the City and University's power to appoint five members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be "self-appointed" by the other board members. This is a good change since all members of the Board of Directors should then be responsible and hopefully responsive to the U of A, City, or Walton Family Foundation.

(2) The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.

(A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility, Rogers AMP, etc.

(B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.

(C) Removes the never used (and probably never usable) power of the U of A Chancellor or Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council.

(3) Lease Agreement.

The original twenty five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended, restated and basically set to begin again upon its approval for a new 25 year term.

(A) Establishes from its new 25 year term which will not end until 2039.

(B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.

(C) Removes the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (built by those bonds).

(D) Warrants that the Walton Arts Center Council, Inc.

“(a)t all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”

COOPERATION WITH U OF A
(City Attorney's Update to May 15th Memo)

Rather than a quitclaim deed, the University is willing to supply the City a long term lease for the parking deck area for nominal consideration. This prevents some fire code issues and ensures the City's management rights for the parking deck.

May 30, 2014

MEMORANDUM

TO: Mayor Lioneld Jordan
Fayetteville City Council

FROM: Walton Arts Center Council
Greg Lee, Chair

Dear Mayor and Fayetteville City Council Members,

On May 19, 2014, the Walton Arts Center Council and the Walton Arts Center Foundation approved the adoption of amended governance documents as follows for the WAC Council and Foundation:

- (a) Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.
- (b) the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.
- (c) the Amended and Restated Interlocal Cooperation Agreement
- (d) the Amended and Restated Bylaws of Walton Arts Center Council, Inc.
- (e) the Amended and Restated Lease between the University of Arkansas/City of Fayetteville and Walton Arts Center Council, Inc.

A summary of the effective changes of these documents is attached, as are the draft documents.

The Walton Arts Center Council further recommended that the Walton Arts Center Foundation authorize the return of the City's initial \$1.5 million investment to the WAC Foundation as an operating endowment to the City for use in the Spring Street Municipal Parking Deck. The original purpose of the funds was to provide income, through use of their earnings in the endowment, to WAC for operating expenses. The funds have been used in this manner to date. The Walton Arts Center Foundation authorized this return of funds, for reinvestment into the Spring Street Municipal Parking Deck.

As per the existing bylaws, we are requesting approval of the above changes from the City Council and the University of Arkansas Board of Trustees (the UA Trustees approved these amendments at their May 2014 meeting). We ask that the Fayetteville City Council review and approve these documents so that they may take effect.

May 30, 2014

Reasons for the Governance Changes:

Several changes are being proposed to the Governance structure of Walton Arts Center (WAC) in order to clarify existing documents and ensure that WAC can continue to achieve its mandate of serving the arts needs of all residents of Northwest Arkansas. There are two key goals to the changes: 1) ensure clarity and flexibility for WAC to continue to meet growing arts and entertainment desires of the region, and 2) affirm and support the original partnership of the UA and City.

Summary of Document Changes

- **The changes provide WAC and WAC Foundation with:**
 - Absolute clarity around the ability for WAC to expand its programs to other venues throughout NWA;
 - Confirmation that budget and operational oversight rests exclusively with the WAC Council;
 - Removal of the principal/agency relationship that currently exists among WAC, the City and the UA;
 - The WAC Council will continue to have broad regional representation with the acknowledgment of the significant contributions and ongoing support of the Walton Family, with the Walton Family Foundation having appointments to the WAC Council of 9 regional representatives, to serve alongside the City and UA's 5 members appointed respectively.
 - Ability for WAC Council to grow proportionally to 38 members
 - The WAC Foundation will no longer be an agent of the City, and the City will no longer have appointments to the Foundation.

- **In addition, the following protective provisions for the City/UA are included:**
 - The Articles of Incorporation of WAC have been amended to provide assurances regarding the quality and quantity of performances occurring at the Dickson Street facility. The Lease among WAC, the

City and the UA contains an identical covenant. Compliance with these programming assurances can be enforced directly by the City or the UA.

- The City and the UA will collectively appoint a majority of the members of the Board of WAC, with each retaining the right to appoint 5 members (or a total of 10 out of 19).
- While the WAC Council may modify the bylaws from time to time, no changes to the bylaws may be made that are inconsistent with or undermine the protective provisions contained in the Articles of Incorporation.
- The Foundation will return the City's original gift of \$1.5 million currently in WAC's operating endowment, and those funds will be reinvested in the parking deck project adjacent to WAC.

- **A New Lease between the City/UA/WAC**

- WAC has maintained a Lease with the City of Fayetteville and the UA for the Dickson Street facility since 1992. That Lease is scheduled to expire in 2017.
- In order to ensure the long-term stability and viability of the Dickson Street facility and to support the upcoming major renovation of the facility, WAC, the City, and the UA have proposed a new long-term Lease. The new lease is also needed due to the addition of the municipal parking deck being built on land currently under lease by WAC.
- The new lease will reflect the changes in the governing documents, specifically providing assurances regarding the quality and quantity of performances occurring at the Dickson Street facility.
- The term of the new Lease will be for an additional 25 years.

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE THE FIFTH AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE WALTON ARTS CENTER FOUNDATION, INC., THE SIXTH AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE WALTON ARTS CENTER COUNCIL, INC. AND THEIR AMENDED BYLAWS, AND THE AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT BETWEEN THE UNIVERSITY OF ARKANSAS AND THE CITY OF FAYETTEVILLE

WHEREAS, the University of Arkansas and City of Fayetteville incorporated the Walton Arts Center Council and Foundation in 1987 pursuant to their Interlocal Cooperation Agreement of December 9, 1986; and

WHEREAS, the Articles of Incorporation have been amended several times and need a fairly comprehensive amendment now to both ensure the continued vitality and viability of “the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013” and to authorize the Walton Arts Center’s right to expand its performance venues into Bentonville and Rogers; and

WHEREAS, the Amended and Restated Interlocal Cooperation Agreement together with proper amendments to the Articles of Incorporation of Walton Arts Center Council, Inc. and Walton Arts Center Foundation, Inc. should assist in the campaign to ensure completion of the Walton Arts Center enlargement and enhancement project; and

WHEREAS, the University of Arkansas Board of Trustees, the Walton Arts Center Council, Inc. Board of Trustees and the Walton Arts Center Foundation, Inc. Board of Trustees have approved this Amended and Restated Interlocal Cooperation Agreement for the Walton Arts Center as well as the Amended Articles of Incorporation and Bylaws for the Council and Foundation.

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 approves the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

Page 2
Ordinance No.

PASSED and **APPROVED** this 17th day of June, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FIFTH AMENDMENT TO THE ARTICLES OF INCORPORATION
OF
THE WALTON ARTS CENTER FOUNDATION, INC.

In order to broaden the purposes for which this corporation currently operates to include managing and investing funds for the operation of the proposed Bentonville performing arts venue, the Arkansas Music Pavilion in Rogers, various venues on the University of Arkansas campus as well as the existing Walton Arts Center and related facilities in Fayetteville, and after the planned expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.,

WE, THE UNDERSIGNED, constituting at least two-thirds of the membership of the Board of THE WALTON ARTS CENTER FOUNDATION, INC., at a meeting of the Board of Directors, pursuant to the authority granted in the ELEVENTH Article of the Articles of Incorporation, do hereby amend the Articles of Incorporation of said Corporation as follows:

1. The THIRD Articles which states the purposes and authorized activities of the corporation is hereby amended by deleting subparagraphs (b) (c) (e) (f) and (g) and substituting the following subparagraphs therefore and adding a new subparagraph (n):

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 2

THIRD: The purposes for which this corporation is organized and the activities proposed to be transacted, promoted or carried on by it are as follows, to wit:

(b) To acquire by gift, lease, purchase, or otherwise, and to hold, own or lease any real, personal or mixed property, for the uses and benefit of the Walton Arts Center in Fayetteville, the proposed new performing arts venue in Bentonville, the Arkansas Music Pavilion in Rogers, and various performance arts and entertainment venues on the University of Arkansas campus, with its consent, and after the planned expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.; to receive, invest, reinvest and manage funds received from the University of Arkansas, individuals, corporations, the Walton Arts Center Council, Inc., and others as agent for the University of Arkansas and as long as those University funds remain under the control of the Walton Arts Center Foundation, Inc. Investments of funds received from the University of Arkansas shall be made in accordance with the investment policies of the University of Arkansas and the City of Fayetteville and all applicable laws of the State of Arkansas. This corporation shall promptly return to the City of Fayetteville its initial \$1.5 Million investment which together with the University's \$1.5 Million investment created the Foundation. This \$1.5 Million dollar investment shall be returned to the City of Fayetteville for its use for the City's construction of the Parking Deck to be built on a portion of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas (upon which the Walton Arts Center

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 3

is located on a remaining portion of Block Six) or as otherwise determined by the Fayetteville City Council. Once this \$1.5 million has been returned to the City, the Foundation shall no longer be an agent of the City of Fayetteville. Regarding the deposit of the \$1.5 million contributed by the University of Arkansas to initially fund the Foundation, the Foundation is empowered to maintain or, with the University of Arkansas' consent, expend the funds for the proposed enlargement and enhancement project for the Walton Arts Center on Dickson Street. Once these funds have been fully used for the project, the Foundation shall no longer be the agent for the University of Arkansas. Funds received from the Walton Arts Center Council, Inc., individuals, corporations and others may be invested in a reasonable, prudent and sound financial manner based upon a policy of this Corporation to be followed in future investment activity and any applicable requirements of law. This Corporation may employ an investment advisor to invest the assets of the Corporation in accordance with the above investment policies.

(c) To establish an endowment; to use a portion of the amount appropriated for expenditure from the endowment to pay the reasonable expenses of the Corporation; to pay all or part of the remaining amount appropriated for expenditure to the Walton Arts Center Council, Inc., for the operation, maintenance and management of the Walton Arts Center in Fayetteville, the proposed performing arts venue in Bentonville and the Arkansas Music Pavilion in Rogers operated and maintained by the Walton Arts Center Council, Inc., as well as other potential performing arts venues on the University of Arkansas at Fayetteville campus with the University's consent, and after the planned

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 4

expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, and the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.

(e) To borrow money and issue notes or other evidences of indebtedness, upon approval of the Walton Arts Center Council, Inc.

(f) To receive and have the opportunity to review the annual budget of the Walton Arts Center Council, Inc., for its operations, maintenance and fundraising.

(g) To sell, lease, or dispose of any property of the corporation conditioned upon approval of the Walton Arts Center Council, Inc., except that it shall not be necessary to obtain approval to sell any property which is donated, sold in the ordinary course of business, or purchased by the corporation for the purpose of immediate resale, nor to transfer property to the Walton Arts Center Council, Inc., nor to buy, sell or trade property held in an investment portfolio.

(n) This corporation is a public benefit corporation.

2. The FIFTH Article shall be amended by deleting the FIFTH Article and substituting the following therefore:

FIFTH: The principal office of this Corporation shall be located at 229 North School Street, Fayetteville, Arkansas 72701, or at such place as the Board of Directors of this Corporation shall from time to time designate as the location of the principal office.

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 5

3. The SIXTH Article shall be amended by deleting the SIXTH Article and substituting the following therefore:

SIXTH: The registered agent of the corporation shall be the President/CEO of the Walton Arts Center, 229 N. School Avenue, Fayetteville, AR 72701, who is currently Peter Lane. The Walton Arts Center Foundation Board of Directors may designate the name of the new registered agent for service of process upon the appointment of a new or interim President/CEO without the need for any approval by the City or University by properly filing such new agent's name with the Secretary of State.

4. The EIGHTH Article shall be amended by adding the following subparagraph (c):

EIGHTH: The City, University of Arkansas, Mayor and Chancellor each shall lose his/her/its right of appointment and removal upon the respective use or return of the initial \$1.5 million investment made by the City and the University of Arkansas to this Corporation, with such power of appointment and removal thereafter being vested in the Walton Arts Center Council, Inc.

5. The ELEVENTH Article shall be amended by deleting the ELEVENTH Article and substituting the following therefore:

ELEVENTH: These Articles of Incorporation may be amended by the approving vote of no less than two-thirds (2/3) of all directors of the Corporation provided, however, that no amendment to Articles Three, Eight, Nine and Eleven shall be effective until it has been approved by the Fayetteville City Council and by the Board of Trustees of the University of Arkansas.

SIXTH AMENDMENT TO THE ARTICLES OF INCORPORATION

OF

THE WALTON ARTS CENTER COUNCIL, INC.

RECITALS AND PURPOSES

PREAMBLE

WHEREAS, on January 19, 1987, the University of Arkansas and the City of Fayetteville initially formed and filed the Articles of Incorporation of the nonprofit corporation now entitled The Walton Arts Center Council, Inc. to construct, operate, manage and maintain the Walton Arts Center facility on Dickson Street and related facilities in Fayetteville, Arkansas; and

WHEREAS, using revenues from the University, the City and citizens of Fayetteville and donations from foundations and citizens, the Walton Arts Center Council, Inc. successfully constructed the Walton Arts Center and adjoining facilities and has managed, maintained and operated the Walton Arts Center for decades to present excellent performing arts, entertainment and education for residents and students of Northwest Arkansas; and

WHEREAS, the regional demand for increased performing arts and entertainment opportunities has created the need and desire to construct, renovate, enlarge and adapt the Walton Arts Center in Fayetteville and otherwise improve regional performing arts and entertainment opportunities in a number of ways, which may include:

- (a) the renovation and enlargement of the Walton Arts Center in Fayetteville;
- (b) the construction of a performing arts venue in Bentonville;

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 2

(c) the construction of a music pavilion in Rogers to house the Arkansas Music Pavilion;
and

(d) with the express consent of the University of Arkansas, to collaborate and cooperate with the University of Arkansas in Fayetteville for the possible enhancement, remodeling, adaptation, and use of University of Arkansas owned facilities for performance or entertainment venues.

WHEREAS, the need to expand the construction, use and operation of performing arts and entertainment venues within the two county area of Washington and Benton Counties in Northwest Arkansas should be reflected and made an express purpose of the Walton Arts Center Council by placing this expanded purpose within the Articles of Incorporation of the Walton Arts Center Council, Inc. by redrafting Articles Three (3) and Eight (8); and because Amendments to most of these Articles of Incorporations should be made quicker and easier, the requirement that the Fayetteville City Council and University of Arkansas Board of Trustees must approve every amendment should be changed by redrafting Article Eleven (11).

NOW THEREFORE, WE THE UNDERSIGNED, constituting at least two-thirds of the membership of The Board of Directors of THE WALTON ARTS CENTER COUNCIL, INC., at a regular meeting of the Board of Directors held on _____, 2014, pursuant to the authority granted in the ELEVENTH Article of the Articles of Incorporation, do hereby amend the Articles of Incorporation of the Corporation with the agreement and consent of the University of Arkansas and the City of Fayetteville as follows:

1. The THIRD Article shall be amended by deleting subparagraphs (a) (b) (c) (d) (e) (h) (j) in their entirety and substituting the following therefore and adding a new (r):

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 3

THIRD: The purposes for which this corporation is organized and the activities proposed to be transacted, promoted or carried on are as follows:

(a) To have all powers and authorities set forth in or contemplated by the Arkansas Nonprofit Corporation Act, A.C.A. §§ 4-28-201 *et seq.* and any amendments thereto and to fulfill a mission to bring great performing artists and entertainers into Northwest Arkansas and thereby to connect, educate and engage our residents through inspiring arts experiences.

(b) (1) To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.

(2) To obtain funding for, operate, manage and maintain a performing arts venue in Bentonville.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 4

- (3) To obtain funding for, operate, manage and maintain a music pavilion in Rogers for the Arkansas Music Pavilion.
- (4) To explore mutually agreeable opportunities for collaboration and cooperation with the University of Arkansas for facilities owned and/or operated by the University of Arkansas that with the express consent of the University may occasionally be used as venues for musical and entertainment performances.
- (c) To promote and facilitate the exposure to and education about the performing arts for Washington and Benton County primary, secondary and college level students by making its performing arts venues available at reduced fees for special performances or classes for such students and to also promote and facilitate exposure to the performing arts and related fields generally, including working in collaboration with other performing arts venues throughout the State of Arkansas.
- (d) To employ a President/CEO for the Walton Arts Center and all other performing arts venues and related facilities managed by the Walton Arts Center Council, Inc. and to employ such other agents and employees as the Council deems proper and advisable.
- (e) To promulgate reasonable rules and regulations for the operation and use of the Walton Arts Center and all other performing arts venues and related facilities, including where appropriate, to set reasonable fees for use of such venues, assuring always that the greatest access to the venues shall be provided for users and user groups.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 5

(h) To enlist volunteers to assist in the promoting and assisting in the activities for the Walton Arts Center and all other performing arts venues managed by the Walton Arts Center Council.

(j) To acquire by gift, lease, purchase, or otherwise, and to hold, own or lease any real, personal or mixed property, for the uses and benefit of the Walton Arts Center, the proposed larger performance arts facility in Bentonville and all other facilities that will be constructed, maintained or managed by the Walton Arts Center Council; and to solicit and receive contributions, and to engage in fund-raising activities for the benefit of the Walton Arts Center, the proposed larger performance arts facility in Bentonville and all other facilities that will be constructed, maintained or managed by the Walton Arts Center Council. Any funds received may be turned over to the Walton Arts Center Foundation, Inc., for investment and management.

(r) This corporation is a public benefit corporation.

2. The SIXTH Article shall be amended by deleting the SIXTH Article and substituting the following therefore:

SIXTH: The registered agent of the corporation shall be the President/CEO of the Walton Arts Center, 229 N. School Avenue, Fayetteville, AR 72701, who is currently Peter Lane. The Walton Arts Center Council Board of Directors may designate the name of the new registered agent for service of process upon the appointment of a new or interim President without the need for any approval by the City or University by properly filing such new agent's name with the Secretary of State.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 6

3. The EIGHTH Article shall be amended by deleting subparagraphs (c) and (d) and substituting the following therefore:

(c) The Walton Family Foundation may appoint nine additional Directors to serve as at large members, each of whom must be a resident of the Northwest Arkansas region. All Directors, from whomever or wherever appointed, shall have demonstrated the ability to function as a Director of this Corporation in the interest of its regional goals; shall possess a demonstrated interest in furthering the presentation and appreciation of all types of artistic endeavor; and shall have expressed a desire to further the goals and policies of the Walton Arts Center Council, Inc. through thoughtful and dedicated services on the Board. The initial Directors to be appointed by the Walton Family Foundation shall be appointed as the terms of the previous Directors appointed by the Board of Directors expire. Directors appointed by the Walton Family Foundation may be removed by the Walton Family Foundation at any time with or without cause.

(d) Notwithstanding the limiting language in (a), the Board of Directors may increase the total number of Directors in increments of four with one of the additional members being appointed by the University, one by the City and two by the Walton Family Foundation.

4. The ELEVENTH Article shall be amended by deleting the ELEVENTH Article and substituting the following therefore:

ELEVENTH: These Articles of Incorporation may be amended by the approving vote of no less than two-thirds (2/3) of all directors of the Corporation provided, however, that no amendment to the Recitals and Purposes Section as well as Articles

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 7

Three, Eight, Nine and Eleven shall be effective until it has been approved by the Fayetteville City Council, by the Board of Trustees of the University of Arkansas and by the Walton Family Foundation. The Walton Family Foundation, the City of Fayetteville and/or the University of Arkansas in Fayetteville shall individually or jointly have proper standing and legal authority to enforce compliance of the Walton Arts Center Council, Inc. Board of Directors with the purposes of this corporation as stated in Article Three by request for an injunction in the Washington County Circuit Court.

AMENDED AND RESTATED BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

ARTICLE 1. PURPOSE AND POWERS

1.1. Purpose. These bylaws are intended to amend and restate the bylaws of Walton Arts Center Council, Inc. (the “**Corporation**”) originally adopted in December of 1986 and subsequently amended from time to time. The Corporation shall have such purposes as are now or may hereafter be set forth in its Amended and Restated Articles of Incorporation of even date (the “**Articles of Incorporation**”) and subsequently filed of record with the Arkansas Secretary of State’s office. The Corporation shall be a public benefit corporation. In the event of a conflict between anything in these By-Laws and any provision or requirement of the Articles of Incorporation, the Articles of Incorporation shall prevail.

1.2. Powers. The Corporation shall have such powers as are now or may hereafter be granted by the Arkansas Nonprofit Corporation Act of 1993, except as such powers may be otherwise modified hereby or by the Articles of Incorporation of this Corporation or that certain Amended and Restated Interlocal Cooperation Agreement (the “**Amended Interlocal Agreement**”) by and between the City of Fayetteville and the Board of Trustees of the University of Arkansas.

ARTICLE 2. BOARD OF DIRECTORS

2.1. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Directors.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

2.2. Number. The number of Directors shall be at least nineteen (19). Any person currently serving as a Director of the Corporation shall continue to serve as a Director of the Corporation until his or her term expires and thereafter may be appointed to serve an additional term three (3) years, provided he or she does not exceed three (3) consecutive terms.

2.3. Appointment and Tenure. Directors shall be ratified at each annual meeting or at any regularly scheduled meeting, as needed. A Director shall serve until the earlier of three (3) years, death, resignation or removal. Under no circumstances shall a member of the Board serve for more than 3 consecutive terms and may only be eligible for reelection or reappointment to the Board following an absence or separation of not less than one (1) year.

2.4. Regular Meeting. A regular annual meeting of the Board of Directors shall be held each year on such date, time and place as shall be designated by the Chairman in the notice of the meeting for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The Board of Directors may provide by resolution for the holding of additional regular meetings.

2.5. Special Meetings. Special meetings of the Board of Directors may be called by, or at the direction of the Chairman or a majority of the voting Directors then in office, to be held at such time and place within Northwest Arkansas, as shall be designated in the notice of the meeting.

2.6. Notice. Notice of the time and place of any meeting of the Board of Directors shall be given at least three (3) days prior thereto by written notice delivered personally or sent by mail, facsimile or other electronic transmission to each Director at his or her address as shown on the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

prepaid. If notice be given by facsimile or other electronic transmission, such notice shall be deemed to be delivered when the facsimile or other electronic transmission is transmitted by the sender to the Director's facsimile number or electronic address. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board needs be specified in the notice or waiver of notice of such meeting, unless otherwise required by law.

2.7. Quorum. A majority of Directors, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the Board.

2.8. Proxies. A Director may vote in person or by proxy executed in writing by the Director. No proxy shall be valid after one month from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

2.9. Manner of Acting.

(a) Formal Action By Directors. Except for the removal of a Director pursuant to Article 2.10 hereof, the act of a majority of Directors in person or by proxy present at a meeting at which a quorum is present shall be the act of the Board of Directors. A Director who participates in a meeting via a telephone conference call shall be deemed to be present in person.

(b) Informal Action by Directors. The Board of Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

the written approval, including electronic written approval (such as, for example and without limitation, facsimile transmission or email communication), of all the Directors setting forth the action so taken. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

2.10. Resignations and Removal. Any Director may resign from the Board at any time by giving written notice to the Chairman or the secretary of the Corporation and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A Director may be removed without cause by the vote of two-thirds (2/3) of the Directors then in office.

2.11. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by appointment in accordance with the provisions of Article 2.3 of these Bylaws.

2.12. Compensation. Directors as such shall not receive any stated salaries for their services, but nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

2.13. Procedure. The Chairman shall preside at meetings of the Board of Directors. The Board of Directors may adopt its own rules of procedure which shall not be inconsistent with these Bylaws.

ARTICLE 3. BOARD OFFICERS AND ADMINISTRATIVE OFFICERS

3.1. Board Officers/Administrative Officers. The officers of the Corporation shall be a chairman, vice-chairman, secretary and treasurer and shall be current members of the Board. The Corporation may, at the discretion of the Board of Directors, have additional officers. Any

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

two or more offices may be held by the same person, except the offices of Chairman and Secretary. The Board shall negotiate and hire a President and shall appoint administrative officers including chief operating officer and chief financial officer (the “**Administrative Officer**” or “**Administrative Officers**”) to serve the Corporation upon such terms and conditions as the Board deems reasonable and prudent. The Chief Executive Officer shall serve at the pleasure of the Board subject to any written employment agreements that may then be in effect. One person may serve in two, but not three, Administrative Officer capacities. In addition, the Administrative Officers shall serve as ex-officio, non-voting members of the Board and shall regularly report to the Board concerning the affairs of the Corporation.

3.2. Election and Term of Office. Other than the Administrative Officers, the officers of the Corporation shall be elected by the Board of Directors at its annual meeting. If the election of officers shall not be held at such meeting, it shall be held as soon thereafter as convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office for a term of one (1) year and until his successor shall have been duly elected and qualified unless he shall sooner resign or be removed.

3.3. Removal and Resignations. Any officer appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby. Any officer may resign at any time by giving written notice to the Chairman or secretary-treasurer of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.4. Vacancies. Vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

3.5. Chairman. The Chairman shall be appointed from among the Directors of the Corporation. The Chairman may sign any deeds, mortgages, bonds, contracts, or other instruments which have been authorized to be executed except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Corporation.

3.6. Vice Chairman. The Vice Chairman shall assist the Chairman in the execution of his or her duties and shall act in the Chairman's stead and be vested with the Chairman's authority in his or her absence. In the absence of the Chairman, the Vice Chairman shall preside at meetings of the Board of Directors. The Vice Chairman shall perform such other duties as from time to time may be assigned to him or her by the Chairman or the Board of Directors.

3.7. Secretary. The secretary shall give notice and record the proceedings of all meetings, and have custody of the seal of the Corporation.

3.8. Treasurer. The Treasurer shall have custody of the corporate funds, keep records of receipts, disbursements and other transactions, and deposit all monies to the credit of the Corporation. The Treasurer shall have the authority to authorize ordinary expenses of operation of the Corporation which shall be reported to the Board of Directors at each regular meeting. The Treasurer shall render to the Chairman and the Board of Directors, when required, an account of all transactions and the financial condition of the Corporation. The Treasurer shall give the Corporation a bond, as the Board of Directors may require.

ARTICLE 4.
CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS

4.1. Contracts. The Board of Directors may authorize any one or more of the Administrative Officers of the Corporation or some other person, in addition to the officers so

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

4.2. Borrowing. No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances. The Corporation shall abide by any restrictions set forth in the Amended and Restated Interlocal Cooperation Agreement.

4.3. Checks. All disbursements shall be by check or electronic funds transfer. All checks for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation in excess of \$5000 shall be signed by at least two (2) of the officers of the Corporation, unless otherwise indicated in any authorizing resolution adopted by the Board.

4.4. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

4.5. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation; provided, however, the Board of Directors shall abide by the terms and conditions pertaining to the University of Arkansas Fund as that term is defined in the Amended Interlocal Agreement.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

**ARTICLE 5.
GENERAL PROVISIONS**

5.1. Books and Records. The Corporation shall keep correct books and records of account and shall also keep records of the minutes of the proceedings of the Board of Directors. Electronic and hard copies of the minutes of the meetings of the Board of Directors shall be regularly distributed to each member of the Board of Directors. Records of account shall be reviewed by a qualified accountant to be selected by the Board annually at the close of each fiscal year. The results of this review shall be reported directly to the Board.

5.2. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year unless otherwise determined by resolution of the Board of Directors.

5.3. Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Nonprofit Corporation" and the state of incorporation.

5.4. Waiver of Notice. Whenever any notice is required to be given under the provisions of the Arkansas Nonprofit Corporation Act of 1993 or under the provisions of the Articles of Incorporation of the Corporation or these Bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

5.5. Loans to Officers and Directors Prohibited. No loans shall be made by the Corporation to its officers, Directors or any Administrative Officer. The Directors of the Corporation who vote for or assent to the making of a loan to an officer or Director of the Corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

5.6. Additional Organizations. The Board of Directors may authorize the formation of such auxiliary organizations as would in the opinion of the Board assist in the fulfillment of the purposes of the Corporation.

5.7. Rules. The Board of Directors may adopt, amend or repeal rules (not inconsistent with these Bylaws or the Amended Interlocal Agreement) for the management of the internal affairs of the Corporation and the governance of its officers, agents, committees and employees.

**ARTICLE 6.
COMMITTEES**

6.1. Standing Committees. Standing Committees of the Corporation shall be designated by action of the Board of Directors. Committee members shall be appointed by the Chairman. The Chairman shall appoint Committee chairmen. Responsibilities of each Committee will be assigned at the discretion of the Board of Directors with the input of the Administrative Officers. Committees may put together proposals for approval by the Board prior to implementation.

6.2. Special Committees. The Chairman may, at any time, appoint additional Committees or Task Forces to address issues and policies of the Association.

**ARTICLE 7.
INDEMNIFICATION**

7.1. Generally. Except as prohibited under Chapter 42 of the Internal Revenue Code and the regulations thereunder, the Corporation shall indemnify every person who is or has been a Director, officer or Administrative Officer of the Corporation and such persons' heirs and legal representatives where such person is a party or is threatened with being made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal,

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

administrative or investigative, including all appeals, by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation in any capacity for any other business organization, against expenses (including attorney's fees), judgment, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action, suit or proceeding, that he had reasonable cause to believe that his conduct was unlawful. The foregoing right of indemnification shall be in addition to all rights to which any such Director or officer may be entitled as a matter of law.

7.2. Liability Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation in any capacity for any other business organization, insuring the Corporation and such person against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Bylaw or applicable law.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

**ARTICLE 8.
AMENDMENTS TO BYLAWS**

The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a two-thirds majority of the Board of Directors at any regular or special meeting of the Board so long as such alteration, amendment or repeal does not attempt to circumvent, change, alter, modify or amend any the terms or restriction set out in the Amended Interlocal Agreement pertaining to the City of Fayetteville Fund (as defined in the Amended Interlocal Agreement) or bonds issued by the Corporation and secured by liens on real property in the City of Fayetteville.

CERTIFICATE

I, _____, Secretary of _____, certify that the attached Bylaws were adopted at a meeting of the Board of Directors as of the ____ day of _____, 2013 following receipt of an executed copy of the Amended Interlocal Agreement approving the form of these Bylaws.

_____, Secretary

City on October 19, 1993 and by the University of Arkansas on June 1, 1993 (the “**Second Amendment**”);

WHEREAS, the Base Agreement, First Amendment and Second Amendment are referred to collectively in this Agreement as the “**Original Agreement**”;

WHEREAS, a center for the arts facility and related structures and improvements were constructed pursuant to the terms of the Original Agreement and such facility is currently operated by Walton Arts Center;

WHEREAS, the continued purpose and mission of the Walton Arts Center and the Foundation has been and is to facilitate, promote, and serve the arts needs of the residents of Northwest Arkansas;

WHEREAS, the Walton Arts Center has achieved outstanding success in its purpose and mission. In order to continue to (i) serve as an arts and cultural beacon for residents of Northwest Arkansas, (ii) meet the requests of outside donors, and (iii) fulfill its overall duty to the residents of Northwest Arkansas and the state of Arkansas, it is necessary to clarify the mandate and role of the Walton Arts Center so as to permit it to operate other facilities and venues throughout Northwest Arkansas (such region being broadly defined to include Washington, Benton, Carroll and Madison Counties) and the state of Arkansas in general; and

WHEREAS, it is necessary to amend and restate the Original Agreement in its entirety for the following reasons: (a) to reflect the success of the Walton Arts Center; (b) to permit the Walton Arts Center and its governing board to continue to conduct business as a separate, free-standing non-profit corporation whose purpose is to serve the arts needs of Northwest Arkansas; and (c) to confirm that the Walton Arts Center is no longer to be the agent of the University of Arkansas or City of Fayetteville nor restricted pursuant to the terms of the Original Agreement,

but only must comply with the terms of this new Lease Agreement being entered into in 2014 (the “2014 Lease Agreement”) and its Amended Articles of Incorporation.

NOW, THEREFORE, the Original Agreement is amended and restated in its entirety as provided below.

ARTICLE I

The Walton Arts Center shall have full and complete authority to manage, operate, and maintain the Walton Arts Center in Fayetteville, Arkansas pursuant to its 2014 Lease Agreement and Articles of Incorporation. The Walton Arts Center shall also have full authority to manage, operate and maintain such other facilities in Northwest Arkansas pursuant to its powers and duties contained in its Articles of Incorporation to serve the arts needs of residents of Northwest Arkansas. The purposes, powers and duties of the Walton Arts Center shall be those set out in the Amended and Restated Articles of Incorporation and By-laws.

The separate non-profit corporation, Walton Arts Center Foundation, Inc., now in existence, shall maintain an endowment and pay over to the Walton Arts Center a portion of that endowment or the income or earnings from it not less than annually for the construction, operation, management, and maintenance of Walton Arts Center facilities and programming in Northwest Arkansas, subject to the qualification set forth in Article II below.

ARTICLE II

FINANCIAL CONDITIONS/TERMS

The Foundation shall return or use the Three Million Dollars (\$3,000,000.00) contributed by the University of Arkansas and City of Fayetteville to begin the Foundation as follows.

Regarding the \$1.5 million contribution by the City of Fayetteville to initially fund the Foundation (along with the \$1.5 million from the University of Arkansas), the Foundation is

empowered to and shall return this \$1.5 million to the City of Fayetteville for the City's use for its construction of the Parking Deck to be built on a portion of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas (upon which the Walton Arts Center is located on a remaining portion of Block Six) or as otherwise determined by the Fayetteville City Council. Once this \$1.5 million has been returned to the City, the Foundation shall no longer be an agent of the City of Fayetteville.

Regarding the deposit of the \$1.5 million contributed by the University of Arkansas to initially fund the Foundation, the Foundation is empowered to maintain or, with the University of Arkansas' consent, expend the funds for the proposed enlargement and enhancement project for the Walton Arts Center on Dickson Street. Once these funds have been fully used for the project, the Foundation shall no longer be the agent of the University of Arkansas.

Any real property currently used or occupied by the Walton Arts Center in the City shall only serve as collateral for a loan or for bonded indebtedness for an existing or new Walton Arts Center facility in the City, if approved in writing by the City.

Simultaneous with the execution of this Agreement, the Walton Arts Center will enter into an amended lease agreement, referred to in this Agreement as the 2014 Lease Agreement, with the University of Arkansas and the City to memorialize the financial and programming commitment the Walton Arts Center will make to the City and the University of Arkansas during the term of the 2014 Lease Agreement.

ARTICLE III

DURATION/REPORTS

The Foundation shall provide a general financial report to the City so long as it continues to have in its possession any portion of the initial \$1.5 million contribution from the City, and to

the University of Arkansas so long as it continues to have in its possession any portion of the initial \$1.5 million contribution from the University of Arkansas.

ARTICLE IV

DISSOLUTION

In the event of dissolution of the Walton Arts Center or the Foundation, all of the net assets of the dissolved corporation shall be distributed and paid out for such charitable purposes as may be determined by the governing documents of the corporation, but otherwise in accordance with the provisions of the Arkansas Non-Profit Corporation Ark. Code Ann. § 4-28-201, as amended, and the Internal Revenue Code.

ARTICLE V

BINDING AGREEMENT

This Agreement shall be binding upon the parties hereto, their successors and assigns and may be signed in one or more counterparts each of which, when taken together, constitutes one agreement.

CITY OF FAYETTEVILLE:

Approved by Resolution adopted by the Fayetteville City Council on the ____ day of _____, 2014.

LIONELD JORDAN, MAYOR

ATTEST: _____
SONDRA SMITH, CITY CLERK

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS:

Approved by Resolution adopted by the Board of Trustees of the University of Arkansas
on this _____ day of _____, 2014.

JIM VON GREMP, CHAIRMAN
BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

ATTEST: _____
JANE ROGERS, SECRETARY

BOARD OF TRUSTEES OF THE WALTON ARTS CENTER COUNCIL, INC.:

Approved by Resolution adopted by the Board of Trustees of the Walton Arts Center
Council, Inc. on the _____ day of _____, 2014.

GREG LEE, CHAIRMAN
BOARD OF TRUSTEES OF THE
WALTON ARTS CENTER COUNCIL, INC.

BOARD OF TRUSTEES OF THE WALTON ARTS CENTER FOUNDATION, INC.:

Approved by Resolution adopted by the Board of Trustees of the Walton Arts Center
Foundation, Inc. on the _____ day of _____, 2014.

JERRY VEST, CHAIRMAN
BOARD OF TRUSTEES OF THE
WALTON ARTS CENTER FOUNDATION, INC.

EXHIBIT A

**AMENDED AND RESTATED ARTICLES OF INCORPORATION of
WALTON ARTS CENTER COUNCIL, INC.
(See attached)**

EXHIBIT B

**AMENDED AND RESTATED BYLAWS of
WALTON ARTS CENTER COUNCIL, INC. (See attached)**

EXHIBIT C

**AMENDED AND RESTATED ARTICLES OF INCORPORATION of
WALTON ARTS FOUNDATION, INC.
(See attached)**

EXHIBIT D

**AMENDED AND RESTATED BYLAWS of
WALTON ARTS CENTER FOUNDATION, INC.
(See attached)**

EXHIBIT E

FORM OF AMENDED AND RESTATED LEASE
(See Attached)

Exhibit E

City of Fayetteville Item Review Form

2014-0246

Legistar File Number

June 17, 2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Don Marr

Submitted By

Mayor's Office

Department

Action Required:

A Resolution approving a Lease between the University of Arkansas, the City of Fayetteville and the Walton Arts Center Council, Inc.

Does this item have a cost? ☐ No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution #

Original Contract Number:

Comments:



June 3, 2014

Don Marr 6-3-14
Paul A. Buhner 6-3-2014

This ordinance was tabled to the
July 1, 2014 City Council meeting at
the June 17, 2014 City Council meeting

STAFF MEMO

TO: City Council Members

THRU: Mayor Jordan *L.J.*
Kit Williams, City Attorney *Kit*

FROM: Don Marr, Chief of Staff *DM*

DATE: May 30, 2014

SUBJECT: 2014-0246 Lease Renewal with the Walton Arts Center Council Inc.

RECOMMENDATION:

Staff recommends approval of the of the resolution to renew the lease between the University of Arkansas, the City of Fayetteville and the Walton Arts Center Council Inc.

BACKGROUND:

See the City Attorney Memo dated May 15th, 2014 for the history and specific details of this request. The Memo is attached within this packet to this Staff Memo for the Agenda Item

DISCUSSION:

Pulled excerpts from the City Attorney Memo of 5/15/2014:

The newly proposed Lease Agreement:

- (A) The current twenty-five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended and restated and set to begin again a new 25 year term.
- (B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.
- (C) Removed the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (build by those bonds).
- (D) Warrants that the Walton Arts Center Council, Inc. shall at all times during the term, shall **operate, manage and maintain** the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of Broadway Musicals & performances, other theatrical, dance and musical performances; concert performances and educational programs

BUDGET/STAFF IMPACT:

There is no staff or additional budgetary impact from this Lease change

Attachments:

City Attorney Memo May 15, 2014

Walton Arts Center Council, Inc. Memorandum May 30, 2014

New Lease Agreement between the University of Arkansas, the City of Fayetteville and the Walton Arts Center Council Inc.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: May 15, 2014

**RE: New Interlocal Agreement with U of A, Governance Documents for
Walton Arts Center, and Lease**

INITIAL MEETINGS

About a year ago, representatives from the Walton Arts Center met with Mayor Jordan and requested a very significant change in how the Walton Arts Center would be governed and managed. Mayor Jordan could not agree to this initial proposal which would have removed most of the City's power and authority. However, he wanted to work with our most generous partner, the Walton Family Foundation, in an effort to preserve the Walton Arts Center's vitality, usefulness, and activity that is so important to our Entertainment District and the quality of life for Fayetteville. This goal to preserve the Walton Arts Center's viability has been our constant lodestar through a year of negotiations.

We then had a meeting with the Chancellor, the U of A Legal Counsel Scott Varady, the Chair of the Walton Arts Center Council (Greg Lee) and other members of the WAC Council including Jeff Gearhart. With its planned expansion into Bentonville to build a larger Arts Center

auditorium and its movement of the Arkansas Music Pavilion into Rogers, the Walton Arts Center, Inc. needed to change its Articles of Incorporation to broaden its allowed purposes which are currently limited to solely operating and maintaining the Walton Arts Center on Dickson Street.

Mayor Jordan then met with representatives of the Walton Family Foundation who expressed their desire and willingness to help our Walton Arts Center in Fayetteville to continue to thrive, but wished that the WAC Council and WAC Foundation would no longer be denoted as "agents" of the City or University. By law, an agent owes its principals (the City and University) a fiduciary duty of utmost good faith and loyalty. The Walton Arts Center staff and the Walton Family Foundation were concerned that the City or University might someday try to exercise our rights as principals to hinder its planned expansion out of Fayetteville into Bentonville and Rogers.

PRINCIPAL GOALS OF THE CITY

Mayor Jordan was willing to accommodate the desires of the Walton Family Foundation (as the Walton Arts Center's major regular donor) and the Walton Arts Center Council if we received enforceable assurances and commitments to preserve the Dickson Street Walton Arts Center in a manner similar to its use of the last few years. In other words, we believed we should receive legal commitments that once a new and larger facility was constructed in Bentonville, the Walton Arts Center on Dickson Street would not be relegated to second class status without Broadway musicals, etc.

NEGOTIATIONS WITH WALTON ARTS CENTER AND U OF A ATTORNEYS

I met with and worked for several months with U of A Counsel Scott Varady and Walton Arts Center, Inc.'s Counsel Marshall Ney to try to meet everyone's expectations and goals. I consulted frequently with Mayor Jordan and Chief of Staff Don Marr to ensure the proposed changes to the Articles of Incorporation of Walton Arts Center Council, Inc., the Articles of Incorporation of the Walton Arts Center Foundation, Inc., their By Laws,

the U of A and City Interlocal Cooperation Agreement, and the new Lease Agreement were acceptable and headed in the right direction.

Please keep in mind that all documents were the result of careful and thoughtful negotiations and compromises. None of the interested parties: (1) The City of Fayetteville; (2) University of Arkansas; (3) Walton Arts Center Council, Inc.; (4) Walton Arts Center Foundation, Inc. or (5) Walton Family Foundation could just dictate a final agreement. We all had to honor each party's legitimate and reasonable concerns. I can now report to you that I believe we have achieved a balanced agreement that satisfies the concerns and wishes of all parties and protects our Walton Arts Center.

SUMMARY OF IMPORTANT CHANGES

(1) The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.

(A) Removes the designation that the Council is agent of the University and City.

(B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus.

(C) Preserves the current level of performances at the Walton Arts Center on Dickson with the following language:

"To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is

met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs."

(D) Preserves the City and University's power to appoint five members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be "self-appointed" by the other board members. This is a good change since all members of the Board of Directors should then be responsible and hopefully responsive to the U of A, City, or Walton Family Foundation.

(2) The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.

(A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility, Rogers AMP, etc.

(B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.

(C) Removes the never used (and probably never usable) power of the U of A Chancellor or Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council.

(3) Lease Agreement.

The original twenty five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended, restated and basically set to begin again upon its approval for a new 25 year term.

(A) Establishes from its new 25 year term which will not end until 2039.

(B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.

(C) Removes the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (built by those bonds).

(D) Warrants that the Walton Arts Center Council, Inc.

“(a)t all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”

COOPERATION WITH U OF A
(City Attorney's Update to May 15th Memo)

Rather than a quitclaim deed, the University is willing to supply the City a long term lease for the parking deck area for nominal consideration. This prevents some fire code issues and ensures the City's management rights for the parking deck.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN AMENDED AND RESTATED LEASE AGREEMENT AMONG THE UNIVERSITY OF ARKANSAS AND CITY OF FAYETTEVILLE AS LANDLORDS AND THE WALTON ARTS CENTER COUNCIL, INC. AS TENANT

WHEREAS, the University, City of Fayetteville and Walton Arts Center Council, Inc. agreed to a 25 year lease to be effective on April 1, 1992 for the Walton Arts Center; and

WHEREAS, in 2001 the Walton Arts Center Council, Inc. deeded the parcel for the Nadine Baum building to the City of Fayetteville and University of Arkansas; and

WHEREAS, it is in the best interests of the Citizens, Businesses and City of Fayetteville to amend and restate the Original Lease Agreement to ensure that the Walton Arts Center on Dickson Street will continue to be operated, managed and maintained "in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013;" and

WHEREAS, the Amended and Restated Lease Agreement together with proper amendments to the Articles of Incorporation of Walton Arts Center Council, Inc. and Walton Arts Center Foundation, Inc. should assist in the campaign to ensure completion of the Walton Arts Center enlargement and enhancement project; and

WHEREAS, the University of Arkansas Board of Trustees, the Walton Arts Center Council, Inc. Board of Trustees and the Walton Arts Center Foundation, Inc. Board of Trustees have approved this Amended and Restated Lease Agreement for the Walton Arts Center.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Amended and Restated Lease Agreement attached as Exhibit 1 and authorizes Mayor Jordan to sign this Lease.

PASSED and APPROVED this 17th day of June 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

May 30, 2014

MEMORANDUM

TO: Mayor Lioneld Jordan
Fayetteville City Council

FROM: Walton Arts Center Council
Greg Lee, Chair

Dear Mayor and Fayetteville City Council Members,

On May 19, 2014, the Walton Arts Center Council and the Walton Arts Center Foundation approved the adoption of amended governance documents as follows for the WAC Council and Foundation:

- (a) Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.
- (b) the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.
- (c) the Amended and Restated Interlocal Cooperation Agreement
- (d) the Amended and Restated Bylaws of Walton Arts Center Council, Inc.
- (e) the Amended and Restated Lease between the University of Arkansas/City of Fayetteville and Walton Arts Center Council, Inc.

A summary of the effective changes of these documents is attached, as are the draft documents.

The Walton Arts Center Council further recommended that the Walton Arts Center Foundation authorize the return of the City's initial \$1.5 million investment to the WAC Foundation as an operating endowment to the City for use in the Spring Street Municipal Parking Deck. The original purpose of the funds was to provide income, through use of their earnings in the endowment, to WAC for operating expenses. The funds have been used in this manner to date. The Walton Arts Center Foundation authorized this return of funds, for reinvestment into the Spring Street Municipal Parking Deck.

As per the existing bylaws, we are requesting approval of the above changes from the City Council and the University of Arkansas Board of Trustees (the UA Trustees approved these amendments at their May 2014 meeting). We ask that the Fayetteville City Council review and approve these documents so that they may take effect.

May 30, 2014

Reasons for the Governance Changes:

Several changes are being proposed to the Governance structure of Walton Arts Center (WAC) in order to clarify existing documents and ensure that WAC can continue to achieve its mandate of serving the arts needs of all residents of Northwest Arkansas. There are two key goals to the changes: 1) ensure clarity and flexibility for WAC to continue to meet growing arts and entertainment desires of the region, and 2) affirm and support the original partnership of the UA and City.

Summary of Document Changes

- **The changes provide WAC and WAC Foundation with:**
 - Absolute clarity around the ability for WAC to expand its programs to other venues throughout NWA;
 - Confirmation that budget and operational oversight rests exclusively with the WAC Council;
 - Removal of the principal/agency relationship that currently exists among WAC, the City and the UA;
 - The WAC Council will continue to have broad regional representation with the acknowledgment of the significant contributions and ongoing support of the Walton Family, with the Walton Family Foundation having appointments to the WAC Council of 9 regional representatives, to serve alongside the City and UA's 5 members appointed respectively.
 - Ability for WAC Council to grow proportionally to 38 members
 - The WAC Foundation will no longer be an agent of the City, and the City will no longer have appointments to the Foundation.
- **In addition, the following protective provisions for the City/UA are included:**
 - The Articles of Incorporation of WAC have been amended to provide assurances regarding the quality and quantity of performances occurring at the Dickson Street facility. The Lease among WAC, the

City and the UA contains an identical covenant. Compliance with these programming assurances can be enforced directly by the City or the UA.

- The City and the UA will collectively appoint a majority of the members of the Board of WAC, with each retaining the right to appoint 5 members (or a total of 10 out of 19).
- While the WAC Council may modify the bylaws from time to time, no changes to the bylaws may be made that are inconsistent with or undermine the protective provisions contained in the Articles of Incorporation.
- The Foundation will return the City's original gift of \$1.5 million currently in WAC's operating endowment, and those funds will be reinvested in the parking deck project adjacent to WAC.

- **A New Lease between the City/UA/WAC**

- WAC has maintained a Lease with the City of Fayetteville and the UA for the Dickson Street facility since 1992. That Lease is scheduled to expire in 2017.
- In order to ensure the long-term stability and viability of the Dickson Street facility and to support the upcoming major renovation of the facility, WAC, the City, and the UA have proposed a new long-term Lease. The new lease is also needed due to the addition of the municipal parking deck being built on land currently under lease by WAC.
- The new lease will reflect the changes in the governing documents, specifically providing assurances regarding the quality and quantity of performances occurring at the Dickson Street facility.
- The term of the new Lease will be for an additional 25 years.

AMENDED AND RESTATED LEASE AGREEMENT

BETWEEN

**BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS FOR THE
UNIVERSITY OF ARKANSAS, FAYETTEVILLE, AND THE CITY OF
FAYETTEVILLE, ARKANSAS**

“Lessor”

and

WALTON ARTS CENTER COUNCIL, INC.

“Lessee”

Table of Contents

Page

1. <u>Premises and Improvements Leased</u>	2
2. <u>Term</u>	2
3. <u>Rental</u>	3
4. <u>Taxes</u>	3
5. <u>Insurance</u>	4
6. <u>Waiver of Subrogation Rights</u>	5
7. <u>Maintenance by Lessee</u>	5
8. <u>Utilities</u>	5
9. <u>Lessee's Improvements and Modifications</u>	6
10. <u>Surrender of Premises</u>	6
11. <u>No Offsets</u>	6
12. <u>Lessee's Use</u>	6
13. <u>Abatement of Lessee's Obligations</u>	7
14. <u>Restoration of Improvements</u>	7
15. <u>Waste - Liens</u>	8
16. <u>Indemnification</u>	8
17. <u>Assignment and Subletting</u>	9
18. <u>Total Condemnation of the Premises</u>	9
19. <u>Partial Condemnation of the Premises</u>	10
20. <u>Determining Fair Market Value</u>	11
21. <u>Holding Over</u>	11
22. <u>Inspection</u>	12
23. <u>Default</u>	12
24. <u>Remedies</u>	13
25. <u>No Waiver</u>	14
26. <u>Quiet Enjoyment</u>	14
27. <u>Further Assurances</u>	15
28. <u>Entire Agreement</u>	15
29. <u>Severability</u>	15
30. <u>Applicable Law</u>	15
31. <u>Venue</u>	15
32. <u>Amendment</u>	15
33. <u>Headings</u>	16
34. <u>Recorded Memorandum</u>	16
35. <u>Binding Effect</u>	16
36. <u>Notices</u>	16
37. <u>Representations and Warranties of Lessee</u>	17
38. <u>Execution</u>	18
39. <u>Counterparts</u>	18

Table of Contents
(continued)

Page

Exhibit A	Description of Real Property
Exhibit B	Plan of Improvement
Exhibit C	Memorandum of Lease

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement is made and entered into this ____ day of _____, 2014, by and among Board of Trustees of the University of Arkansas for the University of Arkansas, Fayetteville (“**University of Arkansas**”), the City of Fayetteville, Arkansas (the “**City**”), and Walton Arts Center Council, Inc., an Arkansas not-for profit corporation (the “**Walton Arts Center**”). The University of Arkansas and the City are collectively referred to in the singular tense from time to time as “**Lessor**”, and the Walton Arts Center is referred to as “**Lessee**”.

RECITALS:

- A. The twenty five (25) year Original Lease Agreement from the City of Fayetteville and the University of Arkansas as the Lessor was effective on April 1, 1992, and leased to Lessee Walton Arts Center lands which included all of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas, as per plat on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. The Original Lease Agreement was signed by the University of Arkansas on November 24, 1993, the Mayor of the City of Fayetteville after the Fayetteville City Council approval on January 18, 1994, and by Lessee on January 4, 1994. The parcel containing the Nadine Baum building was deeded to the City and the University in 2001 by the Walton Arts Center Council, Inc. Capitalized terms not otherwise defined in this Lease Agreement (as defined below) shall have the meanings given them in the Original Lease Agreement.
- B. The Original Lease Agreement expires on March 30, 2017, subject to certain renewal options granted to Lessee.
- C. The parties desire to amend and restate the Original Lease Agreement in its entirety so as to, among other things, extend the primary term of the Original Lease Agreement and permit Lessee to begin a fund raising campaign with the intention of renovating, refurbishing, and enlarging, and operating the Premises if successful, to remove from the leased premises that portion of Block Six upon which the City of Fayetteville is to

construct a parking deck using citizen approved bond revenues and to add the Nadine Baum building and parcel. The area to be retained by the City includes the entire parking deck site from the west side of the parking deck east to School Avenue and from the north side of the parking deck south to Spring Street except for the north liner building which replaces the Walton Arts Center Administrative Headquarters building.

- D. The Original Lease Agreement is hereby amended and restated in its entirety by this Amended and Restated Lease Agreement (“**Lease Agreement**”) and shall be effective as of the latest date set forth on the signature page.
- E. Within a reasonable period of time from the date Lessor executes this Lease Agreement, Lessee shall begin a capital fund raising campaign to cultivate, develop and solicit donors and the general public for funds to renovate, refurbish, enlarge, and operate the Premises in accordance with the renderings, documents, and drawings attached as Exhibit "B" to this Lease Agreement (the “**Lessee Improvement Work**”). While Lessee will use its best efforts with regard to the capital campaign to pay for the Lessee Improvement Work, Lessee offers no assurances that the campaign will be successful or a timeline for completion of the Lessee Improvement Work. Lessor acknowledges that Lessee may be required to complete the Lessee Improvement Work in phases or stages over several years.

In consideration of the terms and conditions contained herein, the sufficiency of which is acknowledged by Lessor and Lessee, the parties agree as follows:

1. Premises and Improvements Leased. Subject to the terms and conditions set forth in this Lease Agreement, Lessor leases and lets the Premises as referred to in C. and as more particularly described in Exhibit “A” unto Lessee who hereby accepts the Premises.
2. Term. Unless sooner terminated as set forth below, the term of this Lease Agreement (“**Term**”) shall be twenty-five (25) years, commencing as of the date Lessor and Lessee execute this Lease Agreement (the “**Lease Commencement Date**”) and shall continue through the

last day of the month at 5:00 PM CST in which the twenty-fifth (25th) anniversary of the Lease Commencement Date occurs. At the end of the original Term and subject to Lessor's right to terminate this Lease Agreement, Lessee shall have the option to extend the Term of this Lease Agreement for a period of twenty-five (25) years subject to the terms and conditions herein set forth, provided Lessee is not otherwise in default. Lessor shall have the right to terminate this Lease Agreement by providing written notice of termination to Lessee at least ninety (90) days prior to of the expiration of the original Term. If Lessor does not exercise its right terminate this Lease Agreement by providing written notice to Lessee at least 90 days prior to the expiration of the original Term, then Lessee shall have the right to extend the Term by providing written notice to the Lessor at any time prior to the expiration of the original Term.

3. Rental. As rental for the Premises, within ten (10) business days of the Lease Commencement Date, Lessee shall pay to Lessor in advance the sum of ONE DOLLAR (\$1.00) for rental of the Premises for the entire Term. As additional rental, Lessee shall pay in full on a timely basis all costs, expenses, fees, and assessments owed in connection with any Lessee Improvement Work that Lessee may commence. As further consideration for the rental for the Premises, the Walton Arts Center agrees to faithfully perform all of its Representations and Warranties of Lessee contained in Paragraph 37 of this Lease Agreement.

4. Taxes. As additional rental, Lessee shall pay, before they become delinquent, all ad valorem taxes, if any, and special or general assessments, if any, lawfully levied or assessed against the Premises, or which may become a lien against the Premises, or which become due and payable during the term hereof. Upon giving notice to Lessor, Lessee may, in good faith and in the manner provided by law, contest any such tax or assessment against the Premises; provided, all costs and expenses incident to contesting such taxes or assessments shall be paid by Lessee, and Lessee shall:

(i) if necessary to prevent any sale of the Premises or any loss or damage to Lessor, pay such tax or assessment under protest; (ii) in the event of an adjudication adverse to Lessee, promptly pay such tax or assessment; (iii) indemnify and hold Lessor harmless against any losses or damages arising from such contest; (iv) take all such other actions as may be reasonably necessary to prevent any such sale or loss; and (v) before such taxes or assessments become delinquent, deliver to Lessor proof of Lessee's timely and full payment of all such taxes and assessments. The duty of indemnification shall survive the expiration or termination of this Agreement. Additionally, nothing contained in this provision shall be a waiver of Lessor's right, at Lessor's cost, to challenge the imposition of any type or kind of taxes on the Premises.

5. Insurance. Nothing contained herein shall obligate or otherwise require Lessor to procure or maintain any insurance pertaining to the Premises. Lessee will, at its sole cost and expense, at all times, keep the Premises insured under special form policies of fire and extended coverage for its full insurable value, with vandalism, sprinkler leakage, and malicious mischief insurance, and such other additional coverages as may from time to time be designated by Lessor, including, without limitation, all-risk coverage, boiler and machinery insurance, flood insurance, earthquake, and war damage insurance added as endorsements to said insurance policy. This insurance must be maintained with a reliable insurance company or companies licensed to do business in the state of Arkansas. These policies shall also include a replacement cost coverage endorsement and must meet all coinsurance requirements of the insurer, in an amount affording coverage of not less than eighty percent (80%) of the full insurable value of the Premises. Such policy or policies shall provide that coverage is noncancelable without thirty (30) days prior written notice to Lessor.

Lessee further agrees to carry and maintain commercial general liability insurance written

as primary coverage with a reliable insurance company licensed to do business in the state of Arkansas, and acceptable to Lessor, covering occurrences that may arise on the Premises as a result of the operations thereon, in amounts not less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage and \$3,000,000 per occurrence of combined bodily injury and property damage. All policies required by this provision shall be jointly payable to the University of Arkansas and the City.

6. Waiver of Subrogation Rights. Lessor and Lessee each hereby waive their respective rights of subrogation against the other for any and all claims and causes of action whatsoever arising out of any injury upon, or loss or damage to, the Premises, or any part thereof, resulting from any risk or peril insured against by any of the insurance policies herein required or purchased by the Lessee. Lessor and Lessee shall each promptly notify their respective insurers of such waiver of subrogation rights.

7. Maintenance by Lessee. Lessee shall, at its sole cost, risk and expense: (i) maintain the Premises in good condition and repair, excepting therefrom only normal, reasonable wear and use; (ii) keep the Premises in a clean, safe and sanitary condition; (iii) make, or cause to be made, all necessary repairs, whether interior, exterior or structural, on the Premises; and (iv) provide for the reasonable care, landscaping and cleaning of the Premises.

8. Utilities. Lessee shall, at its sole cost and expense, provide utilities for the Premises, including without limitation all initial installation or connection fees or charges, and all monthly fees, service charges or late charges for electricity, television, cable, telephones, water, gas, sewer and garbage service, or any other expenses arising out of, or incident to Lessee's occupancy of the Premises; provided, however, Lessor shall, to the best of its ability, continue to furnish on an on-going basis those services to the Premises that it currently provides.

9. Lessee's Improvements and Modifications. Subject to the terms and conditions contained herein, Lessee shall have the right, at its sole cost, expense, and risk: (i) to modify the Premises existing on the Lease Commencement Date hereof in accordance with the Lessee Improvement Work as outlined in Exhibit B attached; and (ii) construct or install on the Premises such other structures, improvements, or fixtures as Lessee may desire in order to continue to satisfy audience and artist demands and so as to remain competitive as an arts center.

10. Surrender of Premises. At the termination under this Lease Agreement or the expiration of the Term: (i) Lessee shall surrender and deliver up to Lessor the Premises in good repair and condition, excepting therefrom only damage by fire, tornado or other casualty and normal, reasonable wear and use; and (ii) all improvements and fixtures, whether existing on the Lease Commencement Date hereof or subsequently constructed on, or affixed to, the Premises, shall be and remain the sole property of Lessor without any payment whatsoever by Lessor to Lessee or any offset in favor of Lessee against Lessor.

11. No Offsets. In the event Lessee shall have any claim whatsoever against Lessor, such claim may not be offset against the rental payments or any other sum payable to Lessor pursuant hereto.

12. Lessee's Use. Lessee shall use and occupy the Premises as an arts center for the residents of Northwest Arkansas and related ancillary support services and educational activities throughout the State of Arkansas; provided, however, certain portions of the Premises may continue to be utilized for general commercial purposes in accordance with applicable laws. At all times Lessee shall conduct its business and control its agents, employees, invitees, licensees, and all other persons entering upon the Premises, or any part thereof, under the authority or by permission of Lessee, in such a manner as is lawful and reputable. Lessee shall not permit, allow or otherwise

suffer any operations to be conducted on the Premises that would cause the suspension or cancellation of the fire and extended coverage insurance policies required under Paragraph 5. Lessee, in the use and occupancy of the Premises, and in the conduct of its business thereon, shall at all times comply with all applicable plat or zoning restrictions, deed restrictions, and all other laws, statutes, ordinances, or regulations applicable to the Premises, and Lessee shall, at its sole cost and expense, secure and maintain all necessary licenses and permits required for the conduct of its business upon the Premises. Lessor shall not permit street vendors to occupy the sidewalks immediately adjacent to the Premises or to operate thereon to the extent Lessor owns and/or possesses the right to control any such sidewalks.

13. Abatement of Lessee's Obligations. Lessee's obligations and duties pursuant to this Lease Agreement, including without limitation its obligations under this Lease Agreement, shall not be abated, terminated or diminished during any period that the Premises, or any part thereof, are untenable, except as provided in Paragraphs 14, 18 or 19; provided, however, that Lessee shall remain responsible to pay all amounts required to be paid under this Lease Agreement and that became due and owing prior to the events identified in Paragraphs 14, 18 or 19.

14. Restoration of Improvements. In the event any or all improvements to the Premises are either partially or entirely destroyed or damaged by any cause whatsoever, Lessee shall notify Lessor of such loss or damage. Thereafter, Lessee shall, at its sole cost, risk and expense, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed: (i) the removal of any debris on the Premises, salvaging to the extent economically feasible any salvageable or reusable materials remaining thereon, and Lessee shall promptly alleviate any dangerous conditions existing on the Premises as a result of such damage or destruction; and (ii) the repair and restoration of the Premises, so that upon the completion of such repairs and restoration,

the Premises will (a) be suitable for Lessee's use, (b) have a commercial value at least as great as that before such loss or destruction, and (c) retain, to the extent practicable, the same appearance and character. If such loss, damage or destruction results from a casualty covered by one or more policies of casualty insurance, the proceeds of such policies shall, to the extent necessary, be paid to Lessee as reimbursement for its reasonable expenses incurred in the repair and restoration of the Premises; provided, however, prior to the payment to Lessee of the proceeds of such insurance policies, Lessee shall deliver to Lessor satisfactory evidence of the completion of such repairs and restoration, and the cost thereof, and the reasonableness of all such costs. If the proceeds from such insurance policies are insufficient to reimburse Lessee for its expenditures relating to the repair and restoration of the Premises, Lessee alone shall bear all costs of such repairs and restoration which are in excess of the proceeds of such insurance policies. In the event the proceeds of such insurance policies are greater than the sums required to repair and restore the Premises, all such remaining sums shall be the sole property of Lessee.

15. Waste - Liens. Lessee shall not allow or suffer: (i) any waste of the Premises; or (ii) permit, by reason of any act of Lessee or failure by Lessee to perform any act required herein, any liens or other encumbrances to attach to, or to exist against, the Premises.

16. Indemnification. Lessee shall indemnify, defend, save and hold harmless from and against all liabilities, claims, losses, damages, fines or causes of action (including without limitation all costs of court, investigation, or attorney's fees incurred in connection with such causes of action or claims and any appellate litigation) due to any death or personal injury to any person whomsoever or any property damage whatsoever arising out of, from, or pertaining to:

- A. Lessee's operations or the conduct of its business upon the Premises, including without limitation any condition pertaining to the Premises attributable thereto;

and

- B. Any breach violation, or nonperformance of any term, covenant, or provision under this Lease Agreement by Lessee, its employees, invitees, licensees and agents.

If Lessor is made a party to any suit or legal action for damages arising from the negligence or other actions of Lessee, its employees, invitees, licensees, or agents (including any of the causes enumerated above), Lessor shall give notice to Lessee of such suit or legal action and Lessee shall thereupon assume all burden, cost and expense incident to the defense, investigation, and settlement of such cause of action or claim, including all costs of court, investigation and attorney's fees in connection therewith, and Lessee shall promptly pay any judgment which may be obtained in such suit or legal action against the Lessor.

17. Assignment and Subletting. Except as to the premises located at 220 North West Avenue, Fayetteville, AR 72702, which currently are sublet for the operation of a "Grubb's" restaurant and as set forth in the next sentence, Lessee may not assign, sublet, mortgage or otherwise encumber its interest or estate in the Premises, or any part thereof, or its rights pursuant to this Lease Agreement, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee may, without Lessor's consent, assign or sublet all or part of its rights and interests under this Lease Agreement to a wholly-owned subsidiary or any affiliated entity; provided, however, any such assignment or subletting by Lessee, with or without the prior written consent of Lessor, shall not act or release Lessee from its obligations pursuant to this Lease Agreement, including, without limitation, its obligation to pay the rental. Notwithstanding the foregoing, Lessee shall be permitted to allow use of the Premises by art-related entities and resident companies.

18. Total Condemnation of the Premises. If, during the term under this Lease

Agreement, all or a substantial part of the Premises are condemned by an entity having the power of eminent domain, and if such condemnation will materially interfere with Lessee's use of the Premises so that the Premises cannot be made suitable for occupation by reasonable repairs or restoration, or if the Premises are sold to such condemning authority or entity under the threat of condemnation, then Lessee may terminate this Lease Agreement by giving notice thereof to Lessor; thereafter, any award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning authority, shall be and remain the sole property of Lessor as to value of any improvements and as to the Lessor with regard to the value of land or real property taken.

19. Partial Condemnation of the Premises. In the event less than a substantial portion of the Premises is taken or condemned by an entity having the power of eminent domain, or sold to such entity under the threat of condemnation, so that such condemnation or sale will not materially interfere with Lessee's use of the Premises, this Lease Agreement shall not terminate, and Lessee shall, at its sole expense, cost and risk, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed, the repair and restoration of the Premises, so that upon the completion of such repairs and restoration the Premises will, to the extent practicable, be suitable for use by Lessee and retain the same appearance, character and commercial value as immediately preceding such condemnation or sale. If the estimated cost of such restoration or repairs equals or exceeds twenty per cent (20%) of the then fair market value (as defined in paragraph 20 below) of the Premises, then prior to the commencement of restoration of repairs, Lessee shall submit for Lessor's approval all drawings and specifications pertaining to repairs or restorations, and Lessee shall not commence any repairs or restorations until Lessor has approved all such drawings and specifications, contracts, contractors, performance and payment bonds (and

the respective sureties thereon) pertaining to such repairs or restoration. An award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning entity, shall be applied to reimburse Lessee for its expenses relating to the restoration and repair of the Premises; provided, Lessee alone shall bear all costs of such restoration or repairs in excess of such award pursuant to such condemnation proceedings or the proceeds of any such sale. In the event the award pursuant to such condemnation proceedings or the proceeds of such sale are in excess of the amount necessary to repair and restore the Premises, then all such awards or proceeds shall be and remain the sole property of Lessee. Such partial condemnation of the Premises shall not release Lessee from its obligation to pay any rental then owed.

20. Determining Fair Market Value. If Lessor and Lessee are unable to agree on a fair market value of the Premises, for the purpose of Paragraph 19 above, then Lessor and Lessee shall, within thirty (30) days, each appoint a qualified person to act as an appraiser, and the decision by such appraisers as to the fair market value of the Premises, shall be binding upon Lessor and Lessee (the “**Fair Market Value**”). In the event such appraisers are unable to agree upon a fair market value for purpose of Paragraph 19, then the appraisers designated by Lessor and Lessee shall choose a third duly qualified person, acceptable to both Lessor and Lessee, and the decision of the third appraiser as to the fair market value of the Premises, shall be binding upon both Lessor and Lessee. In the event the fair market value as determined by such appraisers differs from the rental during the month in which the casualty or loss occurred, then upon the determination of a fair market value for the Premises, Lessor and Lessee shall respectively make such reimbursements or payments of excess or insufficient rental as may be appropriate to the extent legally permitted for Lessor.

21. Holding Over. In the event Lessee shall hold over on the Premises, or any part

thereof, after the termination under this Lease Agreement or the expiration of the Term or any extension, unless otherwise agreed in writing such holding over shall constitute and be construed as a tenancy from month to month only; provided, the rental payments during such period of holding over shall be a sum equal to the Fair Market Value of the rental during the month immediately preceding the termination under this Lease Agreement or the expiration of the Term hereof.

22. Inspection. Lessor, acting through its authorized agents and representatives, shall have the right to enter upon the Premises at any and all reasonable times for the purpose of inspecting the general state of repair and condition of the Premises, or for any other reasonable purpose whatsoever, including, but not limited to, emergencies.

23. Default. Any or all of the following shall constitute an event of default ("Event of Default") pursuant to the terms under this Lease Agreement:

- A. Lessee's failure for any reason whatsoever to comply with the terms, covenants, conditions and agreements contained herein or to promptly discharge any and all of its obligations and duties pursuant hereto, including without limitation Lessee's failure to pay any sum herein required or failure to provide proof of payment of same;
- B. The filing of a petition in bankruptcy by or against Lessee pursuant to any section or chapter of the Bankruptcy Code, as amended, or any other similar law or statute of the United States of America or any state thereof, or entering into any agreement, plan of reorganization or composition with creditors, or any committee thereof;
- C. Lessee's becoming insolvent or making a transfer or assignment for the benefit of

creditors;

- D. The appointment of a receiver or trustee for all, or a substantial part, of Lessee's assets; or
- E. The issuance of process for execution upon or the attachment of Lessee's property upon, or interest in, the Premises.

24. Remedies. Upon the occurrence of any Event of Default, Lessee waives all statutory rights of ejectment, and Lessor shall have the option of pursuing any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this Lease Agreement, in which event Lessee shall promptly surrender the Premises to Lessor, and, if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession of the Premises or the collection of any arrearages in rental payments, enter upon, and take possession of, the Premises and expel or remove any agent, representative or employee of Lessee or any other person who may be occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution of any claim for damages therefore; Lessee agrees to pay to Lessor on demand the amount of all losses and damages which Lessor may suffer by reason of such termination, whether through an inability to relet the Premises on satisfactory terms or otherwise;
- B. Enter upon or take possession of the Premises and expel or remove any agent, representative or employee of Lessee, or any other person occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution or any claim for damages therefore, and thereafter Lessor shall

make a diligent and reasonable effort to relet the Premises on commercially reasonable terms, and Lessee shall pay to Lessor, on demand, any deficiency that may arise by reason of Lessor's inability to relet the Premises for a rental equal to that provided herein, regardless of the reason for such failure; Lessor's good faith determination as to what constitutes commercially reasonable terms for reletting the Premises shall be conclusive for purposes of this paragraph; or

- C. Enter upon the Premises without being liable for prosecution or any claims for damages therefore, and do and perform whatever acts Lessee is obligated to do pursuant to the terms under this Lease Agreement. Lessee shall reimburse Lessor on demand for any expenses which Lessor may incur in thus affecting compliance with Lessee's obligations pursuant hereto, including, without limitation, all court costs and attorney's fees.

25. No Waiver. The waiver by any party hereto of any breach or violation of any provision under this Lease Agreement shall not act or be construed as a waiver of any prior or subsequent breach hereof, nor shall the pursuit of any of the foregoing remedies (as set forth in Paragraph 24) preclude the pursuit of any other remedies provided herein or applicable law, nor shall the pursuit of any remedy provided herein or by applicable law constitute a forfeiture or waiver of any payments or other sums payable to Lessor pursuant hereto, or of any damages accruing to Lessor by reason of Lessee's violation of any of the terms, conditions, and covenants contained herein.

26. Quiet Enjoyment. Lessor warrants and represents to Lessee that it has fully right and power to execute and perform this Lease Agreement and that Lessee, upon the payment of rental and the performance of the other covenants and terms contained herein, shall peaceably

and quietly have, hold, and enjoy the Premises during the full term under this Lease Agreement.

27. Further Assurances. From time to time, and at all times, Lessor and Lessee shall do all such further acts as may be reasonably required to fully perform and carry out the terms and intent under this Lease Agreement.

28. Entire Agreement. This Lease Agreement constitutes the sole and only agreement between Lessor and Lessee concerning the subject matter hereof and supersedes all prior agreements, arrangements or understandings, if any, whether written or oral, relating to the subject matter hereof.

29. Severability. In case any one or more of the provisions contained in this agreement shall for any reason whatsoever be held invalid, illegal or otherwise unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained as a part hereof.

30. Applicable Law. This Lease Agreement shall be interpreted and construed, and the respective rights of Lessor and Lessee governed, according to the laws of the State of Arkansas. Nothing contained in this Lease Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University of Arkansas, the City or their respective trustees, officials, or employees.

31. Venue. Unless otherwise finally determined by court of competent jurisdiction, the venue of any suit, cause of action or other legal proceeding pertaining to this Lease Agreement shall be in Washington County, Arkansas, subject to the non-waiver of immunities provision set forth in Paragraph 31.

32. Amendment. This Lease Agreement may only be amended by a writing executed

by both Lessor and Lessee, and thereafter duly delivered by each respectively to the other and incorporated by reference as a part hereof.

33. Headings. The headings of the respective articles or paragraphs under this Lease Agreement are for the purpose and convenience of reference only, and are not intended to be a part of, or to affect the meaning and interpretation of, this Lease Agreement. The Recitals as the beginning of the Lease Agreement are and shall be construed in harmony with all other substantive provisions of this Lease Agreement.

34. Recorded Memorandum. Concurrently with the execution and delivery under this Lease Agreement, Lessor and Lessee shall execute, deliver and promptly file for record in the deed records of Washington County, Arkansas, a memorandum evidencing this Lease Agreement in substantially the same form as the attached Exhibit "C", to which reference is made for all purposes.

35. Binding Effect. This Lease Agreement is binding upon and shall inure to the benefit of the Lessor and Lessee and their respective successors in title and permitted assigns.

36. Notices. All notices, information, offers, payments of rental, or other communications herein required or permitted, shall be in writing and shall be properly given, made or sent when delivered personally to the below identified representative of such party addressed in such writing, or when mailed by prepaid certified or registered mail, return receipt requested, or by overnight delivery service, to such party at its respective address as follows:

If to Lessor:

The City of Fayetteville, Arkansas
_____, Arkansas

Office of the Chancellor

425 Administration Building
University of Arkansas
Fayetteville, Arkansas 72701

With a copy to:

Office of the General Counsel
421 Administration Building
University of Arkansas
Fayetteville, Arkansas 72701

If to Lessee:

Walton Arts Center Council, Inc.
P. O. Box 3547
Fayetteville, Arkansas 72702
Attention: President and CEO

With a copy to:

Attention: John Alan Lewis
Mitchell, Williams, Selig, Gates & Woodyard, PLLC
5414 Pinnacle Point Drive, Suite 500
Rogers, Arkansas 72758
(479) 464-5656

or to such other respective addresses either Lessor or Lessee may hereafter designate and give notice thereof to the other.

37. Representations and Warranties of Lessee. Lessee hereby covenants and warrants to Lessor that:

- A. Lessee is a not-for-profit corporation incorporated pursuant to the laws of the State of Arkansas, has duly paid all applicable franchise taxes and charter fees, and is duly authorized to do business in the State of Arkansas;
- B. The undersigned individual, acting as the duly authorized agent of Lessee, has full power and authority to execute this Lease Agreement as the act and deed of Lessee; provided, however, Lessee's taking possession of the Premises, or any part thereof, shall be conclusively deemed as Lessee's ratification under this Lease

Agreement; and Lessee has fully and completely inspected the Premises, and as of the effective date hereof the Premises are adequate and sufficient for the purposes for which they are herein leased. At all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iii) educational programs.

- C. Notwithstanding the foregoing, nothing in this Lease Agreement shall prevent Lessee from providing administrative or support services at the Premises for the benefit of other arts and entertainment venues in and around Northwest Arkansas which are owned, leased, operated or managed by Lessee.

38. Execution. This Lease Agreement was executed by Lessor and Lessee on the dates shown respectively on the acknowledgments of each, but is effective for all purposes on the effective date as set forth above.

39. Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Signatures transmitted electronically via PDF copy or via facsimile shall be binding and make this Lease Agreement effective.

[SIGNATURE PAGE(S) FOLLOW]

“LESSOR”

CITY OF FAYETTEVILLE

By: _____
Mayor

ATTEST:

City Clerk

Date: _____, 2014

**BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, ACTING FOR THE
UNIVERSITY OF ARKANSAS,
FAYETTEVILLE**

By: _____
Donald R. Bobbitt
President

ATTEST:

Secretary

Date: _____, 2014

“LESSEE”

WALTON ARTS CENTER COUNCIL, INC.

By: _____
Title: _____

ATTEST:

Secretary

Date: _____, 2014

EXHIBIT "A"

DESCRIPTION OF PREMISES

Tract A:

All of Block Six (6), of Original Town of Fayetteville, as per Plat of Record in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas; LESS AND EXCEPT the southeast corner of said block more particularly described as follows: BEGINNING at the Southeast (SE) corner of said Block; thence along the East line of said Block N02°40'06"E a distance of 289.09 feet; thence leaving said East line N87°19'54"W a distance of 105.17 feet; thence S47°59'48"W a distance of 30.24 feet; thence S03°05'54"W a distance of 56.54 feet; thence N87°06'23"W a distance of 14.83 feet; thence S02°37'21"W a distance of 211.63 feet to the South line of said Block; thence along said South line S87°26'40"E a distance of 141.77 feet to the POINT OF BEGINNING.

In addition to the above described parcel, once the parking deck and its north liner building have been completed, the premises leased by the City of Fayetteville and the University of Arkansas to the Walton Arts Center Council, Inc. shall include the north liner building of the parking deck for use of the Walton Arts Center as its Administrative Headquarters, and the lower level as the expanded backstage area for the Walton Arts Center. Upon completion of the parking deck the City agrees to provide twenty-eight (28) parking spaces within the deck for the Walton Arts Center staff's use and another seven (7) parking spaces in the Spring Street parking lot.

Tract B:

A part of Block 8 of the original town (now City) of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northeast corner of Block 8, thence North 87 degrees 50 minutes West 90.82 feet to the East railroad right of way, thence South 29 degrees 34 minutes West 215.87 feet, thence South 27 degrees 34 minutes West 43.4 feet, thence South 22 degrees 28 minutes West 62.9 feet, thence South 18 degrees 24 minutes West 42.4 feet along the East right of way, thence South 88 degrees 57 minutes East 254.70 feet, thence North 325.82 feet to the point of beginning, containing 1.34 acres, more or less.

EXHIBIT “B”

PLAN OF IMPROVEMENT – LESSEE IMPROVEMENT WORK

[TO BE PROVIDED]

This memorandum evidencing the Amended and Restated Lease Agreement shall be filed for record in the deed records of Washington County, Arkansas.

EXECUTED AND EFFECTIVE this _____ day of _____, 2014.

“LESSOR”

CITY OF FAYETTEVILLE

By: _____
Mayor

ATTEST:

City Clerk

Date: _____, 2014

**BOARD OF TRUSTEES OF THE UNIVERSITY
OF ARKANSAS, ACTING FOR THE
UNIVERSITY OF ARKANSAS,
FAYETTEVILLE**

By: _____
Donald R. Bobbitt
President

ATTEST:

Secretary

Date: _____, 2014

“LESSEE”

WALTON ARTS CENTER COUNCIL, INC.

By: _____

Title: _____

ATTEST:

Secretary

Date: _____, 2014

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

On this the ____ day of _____, 2014, 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 _____ and _____ to me personally well known, who stated they were the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipality, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipality, and further stated and acknowledged that they 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 on this ____ day of _____, 2014.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF PULASKI)

On this the ____ day of _____, 2014, 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 _____ and _____ to me personally well known, who stated they were the President and _____ of the University of Arkansas, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said entity, and further stated and acknowledged that they 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 on this ____ day of _____, 2014.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

On this the ____ day of _____, 2014, 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 _____ and _____ to me personally well known, who stated they were the Chairman and Secretary of the Walton Arts Center Council, Inc., a non-profit corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said non-profit corporation, and further stated and acknowledged that they 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 on this ____ day of _____, 2014.

Notary Public

My Commission Expires:

City of Fayetteville Item Review Form

2014-0257

Legistar File Number

07/1/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Jesse Fulcher

Submitted By

Development Services

Department

Action Required:

RZN 14-4687: Rezone (659 N.GENEVIEVE AVE./DAVIS, 436): Submitted by BATES & ASSOCIATES for property located at 659 N. GENVIEVE AVE. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 1.62 acres. The request is to rezone the property to RSF-4 RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE.

Does this item have a cost? ☐ No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution #

Original Contract Number:

Comments:

Henry C. P. A. - 06-11-2014
K. A. - 6-12-2014
Paul A. Beshen 6-12-2014

Don Miller 6-13-14
Timothy D. -



CITY COUNCIL AGENDA MEMO

MEETING OF JULY 1, 2014

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, Planning Director

FROM: Jesse Fulcher, Senior Planner

DATE: June 9, 2014

SUBJECT: **RZN 14-4687: Rezone (659 N.GENEVIEVE AVE./DAVIS, 436):**
Submitted by BATES & ASSOCIATES for property located at 659 N. GENVIEVE AVE. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 1.62 acres. The request is to rezone the property to RSF-4 RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE.

RECOMMENDATION:

The Planning Commission recommends approval of an ordinance to rezone the property to RSF-2, Residential Single-family, 2 units per acre. Planning Division staff recommends denial of the request. The applicant is requesting that the City Council consider the original request to rezone the property to RSF-4, Residential Single-family, 4 units per acre (see letter attached).

BACKGROUND:

The Planning Commission discussed a rezoning petition for RSF-4, Residential Single-family, 4 units per acre at the April 28th meeting. Planning staff was recommending denial of the proposal. The Planning Commission tabled the item to allow the applicant time to consider a less dense zoning district for the property that would allow two new homes to be constructed.

The applicant presented a request for RSF-2, Residential Single-family, 2 units per acre at the May 12 Planning Commission meeting. The request was forwarded to the City Council with a recommendation for approval.

Upon further review by the property owner and City staff it was determined that the RSF-2 zoning would not permit two new units. The property owner has submitted a letter requesting that the City Council consider the original request for RSF-4.

The subject property is located at the southwest corner of Tackett Drive and Genevieve Avenue, west of 54th Avenue. The property contains approximately 1.5 acres and is developed with a two-family residence that was constructed in 1976. Properties immediately adjacent to this property range in size from 0.63 acres to 2.42 acres.

CITY PLAN 2025 FUTURE LAND USE PLAN: City Plan 2030 Future Land Use Map designates this property as a *Rural Residential Area*. These areas recognize low density, large lot residential development, but are identified to encourage the conservation and preservation of woodlands,

grasslands, or agricultural lands that are sparsely settled. They may not have adequate street and water infrastructure or public services, such as police and fire, to support urban or suburban densities and development patterns, nor should these services be expanded to accommodate further growth unless they are in line with the following principles:

- a. Allow and encourage historical agricultural and related uses to continue and to occur as permanent land uses within planned developments.
- b. If developed, encourage alternative development patterns, such as conservation or cluster development types, to achieve compatibility with surrounding rural areas.
- c. Foster a culture that supports local food production on a variety of scales.
- d. Encourage, preserve and protect viable agribusinesses such as orchards, berry farms and small scale produce-yielding businesses that provide goods for the local market.

COMPATABILITY: The property is located in an area that is characterized by large lot, rural residences. There is a small subdivision to the east that is comprised of ¼ acre lots, but that development pattern is the exception. The current development pattern on this lot fits the development pattern of the area, in staff's opinion. Including this property there are three 1.5 acre lots on Genevieve Avenue that are developed with a duplex at a density of 1 unit per ¾ acre. This is an appropriate density given the narrow, rural nature of the roadways and the small water system in place. There is a 2" water line serving around 10-12 houses.

The Rural Residential Area designation recognizes low density, large lot residential development and encourages land conservation. Rezoning the property to RSF-4 allows for the development of 8,000 square foot lots (RSF-2 allows 17,860 square foot lots), which is inconsistent with the predominant land pattern in the area and with immediately adjacent properties. Creating suburban densities in rural areas is inconsistent with land use planning objectives and land use plans.

DISCUSSION:

On May 12, 2014 the Planning Commission forwarded this item to the City Council with a recommendation for approval of RSF-2 with a vote of 6-3-0 with Commissioners Chessser, Cook and Winston voting 'no'.

BUDGET/STAFF IMPACT:

N/A

Attachments:

CC Ordinance

Exhibit A

Exhibit B

Planning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 14-4687, FOR APPROXIMATELY 1.62 ACRES, LOCATED AT 659 N. GENVIEVE AVENUE FROM R-A, RESIDENTIAL-AGRICULTURAL TO RSF-2, RESIDENTIAL SINGLE FAMILY, 2 UNITS PER ACRE.

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 changes the zone classification of the following described property from R-A, Residential-Agricultural to RSF-2, Residential Single Family, 2 units per acre, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

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

PASSED and APPROVED this day of , 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

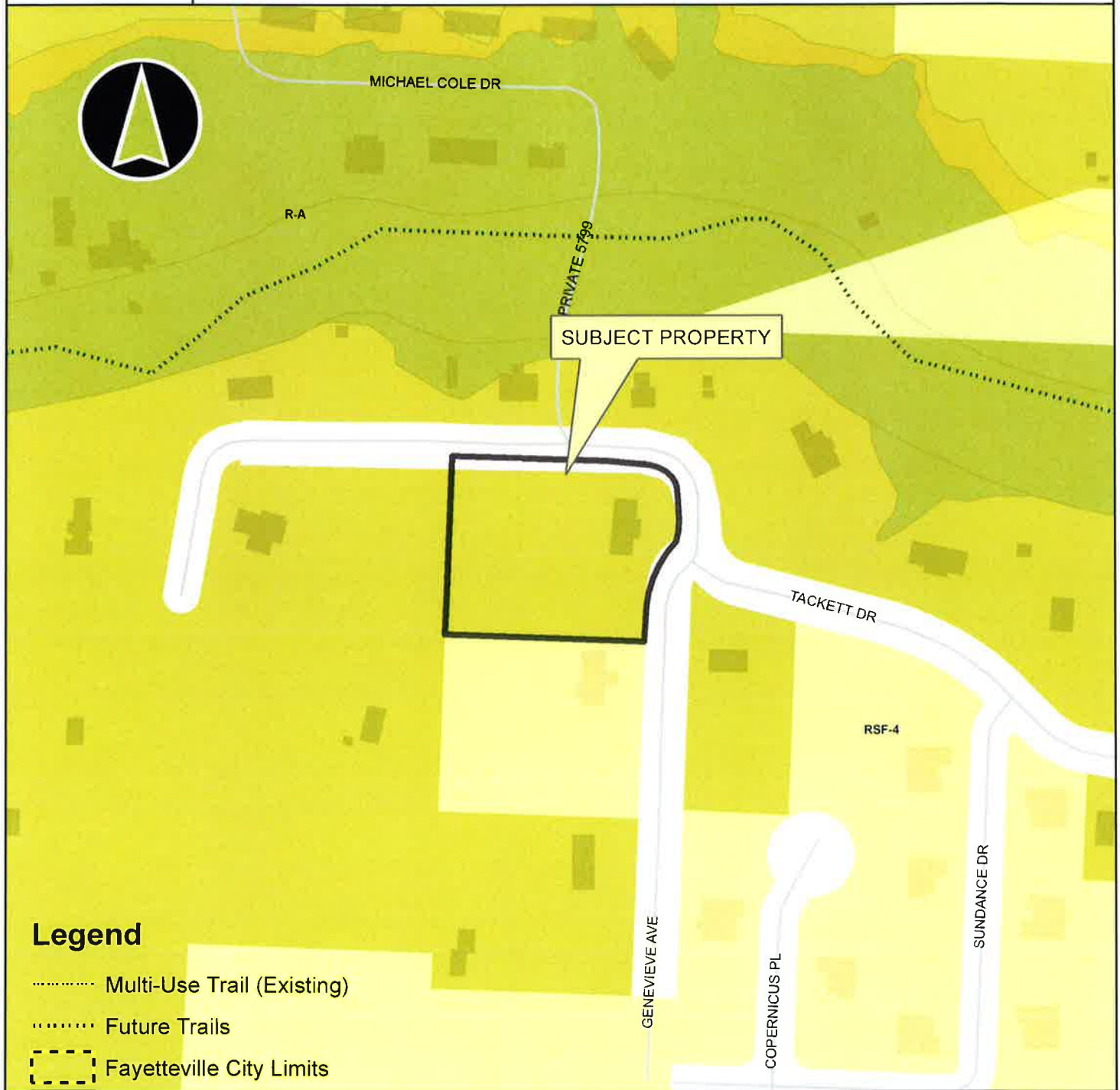
EXHIBIT 'A'

C. 1
RZN 14-4687 (659 N.
Genevieve Ave./Davis)
Page 5 of 22

RZN14-4687

DAVIS

Close Up View



Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview

RZN14-4687

- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area

0 75 150 300 450 600 Feet

EXHIBIT 'B'

14-4687

SURVEY DESCRIPTION:

OVERALL PARCEL #765-16245-000:

A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 31 WEST, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11 AND RUNNING THENCE N01°46'13"W 185.10' TO AN EXISTING CONCRETE MONUMENT ON THE SOUTH RIGHT-OF-WAY OF TACKETT DRIVE, THENCE ALONG THE SOUTH AND WEST RIGHT-OF-WAY THE FOLLOWING: N87°43'17"E 207.69', S88°53'14"E 59.08', ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 51.45' FOR A CHORD BEARING AND DISTANCE OF S68°56'52"E 31.81', ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 40.70' FOR A CHORD BEARING AND DISTANCE OF S24°45'24"E 28.35', S06°55'47"E 33.59', ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 97.88' FOR A CHORD BEARING AND DISTANCE OF S02°19'36"W 30.78' TO THE WEST RIGHT-OF-WAY OF GENEVIEVE AVENUE, THENCE ALONG SAID WEST RIGHT-OF-WAY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 153.84' FOR A CHORD BEARING AND DISTANCE OF S17°17'01"W 114.96', S00°00'16"E 29.39' TO AN EXISTING REBAR ON SAID RIGHT-OF-WAY, THENCE LEAVING SAID RIGHT-OF-WAY S87°57'31"W 269.46', THENCE N01°46'13"W 57.93' TO THE POINT OF BEGINNING, CONTAINING 1.62 ACRES, MORE OR LESS. SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

Jesse Fulcher , AICP

City Planning

125 W, Mountain St.

Fayetteville, AR

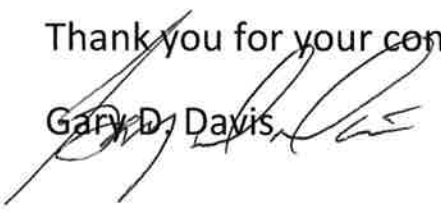
RE: 659-651 Genevieve

Mr. Fulcher,

Please accept this letter as a request to amend my rezoning request to RSF-4, Residential Single-Family, 4 units per acre. The density limitations of the RSF-2 zoning district will only permit 1 new single-family home. My intent is to build 2 new homes on either side of the existing duplex. Further, the RSF-2 district does not permit duplexes , so the existing duplex would be a nonconforming use that could not be corrected.

Thank you for your consideration of this request.

Gary D. Davis



PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Jesse Fulcher, Senior Planner

MEETING DATE: May 12, 2014

SUBJECT: **RZN 14-4687: Rezone (659 N.GENEVIEVE AVE./DAVIS, 436):**
 Submitted by BATES & ASSOCIATES for property located at 659 N. GENVIEVE AVE. The property is zoned R-A, RESIDENTIAL-AGRICULTURAL and contains approximately 1.62 acres. The request is to rezone the property to RSF-2 RESIDENTIAL SINGLE FAMILY, 2 UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN 14-4687** to the City Council with a recommendation for denial.

BACKGROUND:

The Planning Commission discussed a rezoning petition for RSF-4, Residential Single-family, 4 units per acre at the April 28th meeting. The request was tabled to allow the applicant time to consider a less dense zoning district for the property. A survey and revised request letter are attached.

The subject property is located at the southwest corner of Tackett Drive and Genevieve Avenue, west of 54th Avenue. The property contains approximately 1.5 acres and is developed with a two-family residence that was constructed in 1976. Properties immediately adjacent to this property range in size from 0.63 acres to 2.42 acres. Surrounding land use and zoning is depicted on Table 1.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Single-family residential	R-A, Residential Agricultural
South	Two-family residential	RSF-4, Residential Single-family, 4 units/ acre
East	Single-family residential	R-A, Residential Agricultural
West	Single-family residential	R-A, Residential Agricultural

DISCUSSION:

Request: The request is to rezone the property from R-A, Residential Agricultural to RSF-2, Residential Single-Family, 2 units per acre.

Public Comment: Staff has not received public comment.

PLANNING COMMISSION ACTION: Required

Date: May 12, 2014 ☐ Tabled ☒ Forwarded ☐ Denied

Motion: Autry Second: Noble Vote: 6-3-0 (Chesser, Cook and Winston voted 'No')

CITY COUNCIL ACTION: Required

Date: June 3, 2014 ☐ Approved ☐ Denied

INFRASTRUCTURE:

Streets: The site has access to Genevieve Avenue and Tackett Drive. Both roads are unimproved with open ditches and no lane striping. Roadway improvements will be determined at the time of development.

Water: Public water is accessible to the site. A 2" water main exists on the north and east sides of the property.

Sewer: Sanitary sewer is available to the site. A 6" sanitary sewer main exists on the north and east sides of the property.

Drainage: Any additional improvements or requirements for drainage will be determined at time of development. This property is not affected by the 100-year floodplain or the Streamside Protection Ordinance.

Fire: This development will be protected by Engine 7 located at 835 Rupple Rd. It is 3 miles from the station with an anticipated response time of 4 minutes to the beginning of the development. The Fayetteville Fire Department does not feel this development will affect calls for service or our response times.

Police: The Police Department did not express any concerns with this request.

CITY PLAN 2030 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Map designates this property as a Rural Residential Area. These areas recognize low density, large lot residential development, but are identified to encourage the conservation and preservation of woodlands, grasslands, or agricultural lands that are sparsely settled. They may not have adequate street and water infrastructure or public services, such as police and fire, to support urban or suburban densities and development patterns, nor*

should these services be expanded to accommodate further growth unless they are in line with the following principles:

- a. Allow and encourage historical agricultural and related uses to continue and to occur as permanent land uses within planned developments.***
- b. If developed, encourage alternative development patterns, such as conservation or cluster development types, to achieve compatibility with surrounding rural areas.***
- c. Foster a culture that supports local food production on a variety of scales.***
- d. Encourage, preserve and protect viable agribusinesses such as orchards, berry farms and small scale produce-yielding businesses that provide goods for the local market.***

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The property is located in an area that is characterized by large lot, rural residences. There is a small subdivision to the east that is comprised of ¼ acre lots, but that development pattern is the exception. The current development pattern on this lot fits the development pattern of the area, in staff's opinion. Including this property, there are three 1.5 acre lots on Genevieve that are developed with a duplex at a density of 1 unit per ¾ acre. This is an appropriate density given the narrow, rural nature of the roadways and the small water system in place. There is a 2" water line serving around 10-12 houses.

The Future Land Use Map designates this property as a Rural Residential Area, which recognizes low density, large lot residential development and encourages land conservation. Rezoning the property to RSF-2 allows for the development of 17,860 square foot lots (0.41 acres), which is inconsistent with the predominant land pattern in the area and with immediately adjacent properties. Creating suburban densities in rural areas is inconsistent with land use planning objectives and land use plans.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff has not determined the exact date that this lot (or the next two lots) was created. However, the County Assessor's records indicate that the house was built in 1976 and the 1.5 acre lot was transferred to a new owner in 1983. The property was annexed into the City of Fayetteville in 1982, so it has been zoned agricultural for approximately 32 years. In staff's opinion there is no justification to rezone the property at this time. Currently, the lot is nonconforming, as it is less than the 2-acre minimum for the R-A zoning district. However, the lot is already developed, so there is no restriction on the current building. The only reason to rezone the property at this point is to allow the development of additional density, which is inconsistent with the land use plan and surrounding land uses.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning the property to RSF-2 could allow up to two additional homes on the property. While this is a minor increase in traffic, the existing street system in this area is inadequate for suburban densities. At approximately 16 feet wide, neither Tackett nor Genevieve provide adequate width for fire department access (photos attached). As noted in the Future Land Use Plan, Rural Residential Areas don't have adequate street and water infrastructure or public services, such as police and fire, to support urban or suburban densities and development patterns, nor should these services be expanded to accommodate further growth

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Rezoning the property to RSF-2 will allow up to two additional houses on the property. This increase in density will not undesirably increase the load on public services. Comments from service providers are included.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
- b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

BUDGET/STAFF IMPACT:

None

ATTACHMENTS: Proposed zoning criteria, Fire Department comments, applicant's letter, rezoning exhibit/survey, photographs, maps

TITLE XV UNIFIED DEVELOPMENT CODE

161.03 District R-A, Residential-Agricultural

(A) *Purposes.* The regulations of the agricultural district are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; provide opportunity for affordable housing, increase scenic attractiveness; and conserve open space.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 6	Agriculture
Unit 7	Animal husbandry
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 37	Manufactured homes
Unit 41	Accessory dwellings
Unit 43	Animal boarding and training

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 20	Commercial recreation, large sites
Unit 24	Home occupations
Unit 35	Outdoor Music Establishments
Unit 36	Wireless communications facilities
Unit 42	Clean technologies

(C) *Density.*

Units per acre	One-half
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(D) *Bulk and area regulations.*

Lot width minimum	200 ft.
Lot Area Minimum:	
Residential:	2 acres
Nonresidential:	2 acres
Lot area per dwelling unit	2 acres

(E) *Setback requirements.*

Front	Side	Rear
35 ft.	20 ft.	35 ft.

(F) *Height requirements.* There shall be no maximum height limits in the A-1 District,

provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required setback lines.

(G) *Building area.* None.

(Code 1965, App. A., Art. 5(1); Ord. No. 1747, 6-29-70; Code 1991, §160.030; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5195, 11-6-08; Ord. 5238, 5-5-09; Ord. 5479, 2-7-12)

161.06 District RSF-2, Residential Single-Family – Two Units Per Acre

(Code 1991, §160.045; Ord. No. 3792, §4, 5-17-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09; Ord. 5462, 12-6-11)

(A) *Purpose.* To provide a single-family dwelling transition zone between single-family neighborhoods that have developed with larger lot sizes (one acre and over) and areas that have developed with smaller lot sizes (8,000 sq. ft.), and to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(C) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings

(D) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cottage Housing Development

(E) *Density.*

Units per acre	2
----------------	---

(F) *Bulk and area regulations.*

Lot width minimum	100 ft.
Lot area minimum	17,860 Sq. Ft.
Land area per dwelling unit	17,860 Sq. Ft.

(G) *Setback requirements.*

Front	Side	Rear
30 ft.	15 ft.	30 ft.

(H) *Building height regulations.*

Building Height Maximum	45 ft.
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Height regulations. Structures in this District are limited to a building height of 45 feet. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses, (ord. # 4858).

(I) *Building area.* None.



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS



FIRE DEPARTMENT

303 West Center Street

Fayetteville, AR 72701

P (479) 575-8365 F (479) 575-0471

Zoning Review

To: Jesse Fulcher
From: Will Beeks
Date: April 1, 2014
Re: RZN 14-4687

This development will be protected by Engine 7 located at 835 Ruppel Road. It is 2 miles from the station with an anticipated response time of 4 minutes to the beginning of the development. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Fayetteville Fire Department



Bates & Associates, Inc.

Civil Engineering & Surveying

91 W. Colt Square Suite 3/ Fayetteville, AR 72703

PH: 479-442-9350 * FAX: 479-521-9350

www.nwabatesinc.com

May 5, 2014

Planning Commission
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: 659 N. Genevieve Ave. Property Rezoning

Dear Commissioners,

This letter is to fulfill the requirements of item 5 on the rezoning application. We are proposing to rezone the property from R-A to RSF-2.

- a. Current property owner: Gary & Loice Davis. There are no pending sales on this property.
- b. The zoning change will allow the owner to split the property for future development. I have attached a copy of the survey which shows the proposed splits for this property.
- c. This parcel is located adjacent to RSF-4 zoning and the future land use map shows this area to be zoned for residential activities. This property will be similar to the other properties in the area in terms of land use and appearance. Traffic should not be affected due to the change in zoning.
- d. A 6" sewer main is located on the East and North sides of the property, and a 2" water main is also located on the East and North sides of the property.
- e. This parcel is located adjacent to RSF-4 zoning and the future land use map shows this area to be zoned for residential activities.
- f. In order to split this property for residential development, the zoning must be changed to one of the other more conducive zonings for this area.
- g. Since this area is primarily residential already, traffic should not be impacted by the change in zoning.
- h. There are currently sewer and water services available in this area that are being used by other residential properties so this rezoning will not undesirably increase the load on public services.
- i. The property is currently zoned R-A. This is the default zoning for property being annexed into the city limits which lie on the outside edge of the city. While this has been the usual land use for this area, it is slightly impractical when considering the surrounding uses. Finally, it would no doubt be more favorable to the residents and adjacent property owners for this property to be used as a residential zoning district.

If you have any questions or require additional information, please feel free to call.

Sincerely,
Derrick Thomas





RZN14-4687

Current Land Use

DAVIS



Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview

RZN14-4687

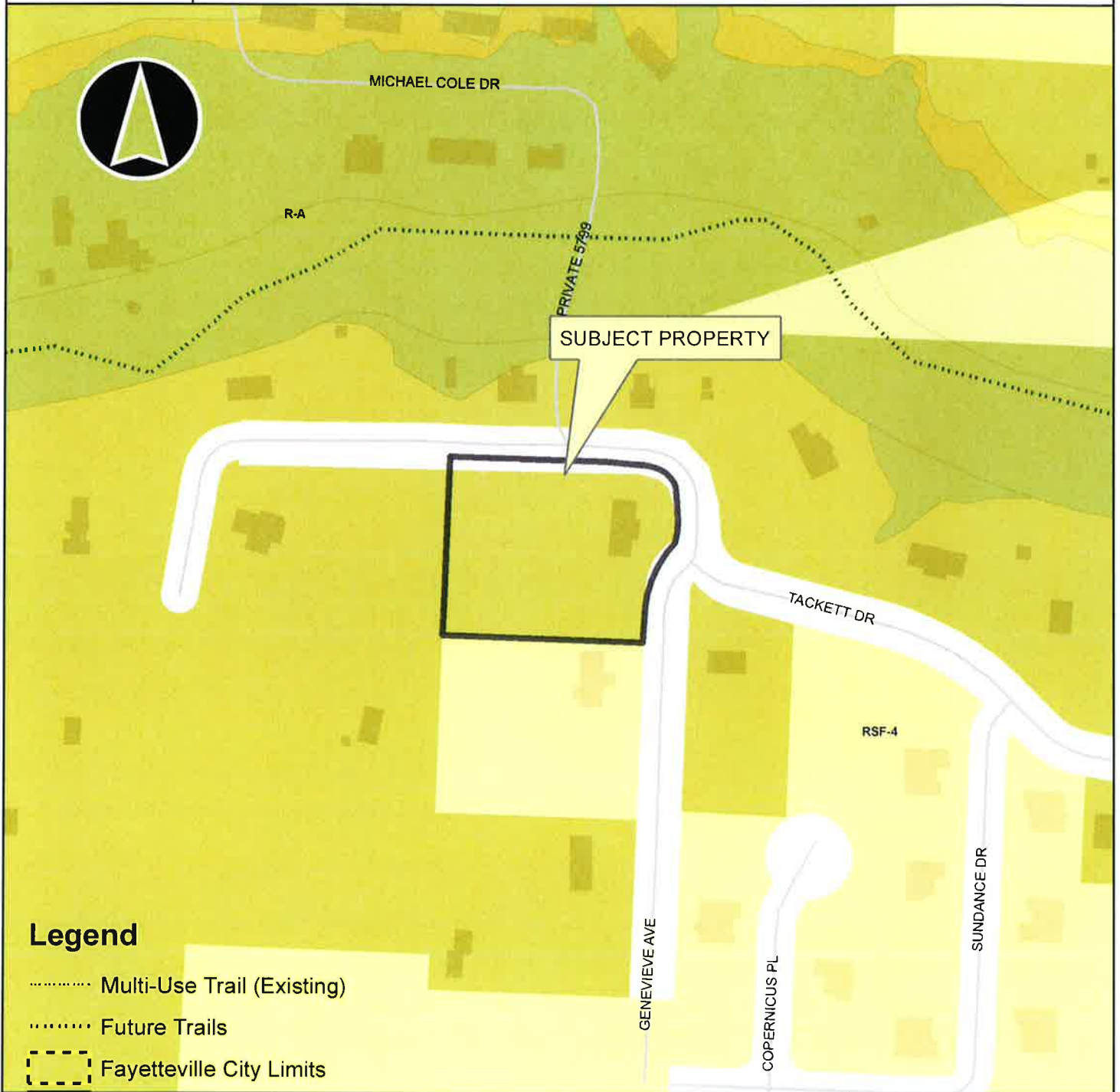
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area



RZN14-4687

DAVIS

Close Up View



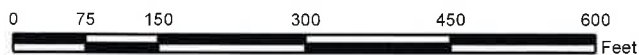
Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview

RZN14-4687

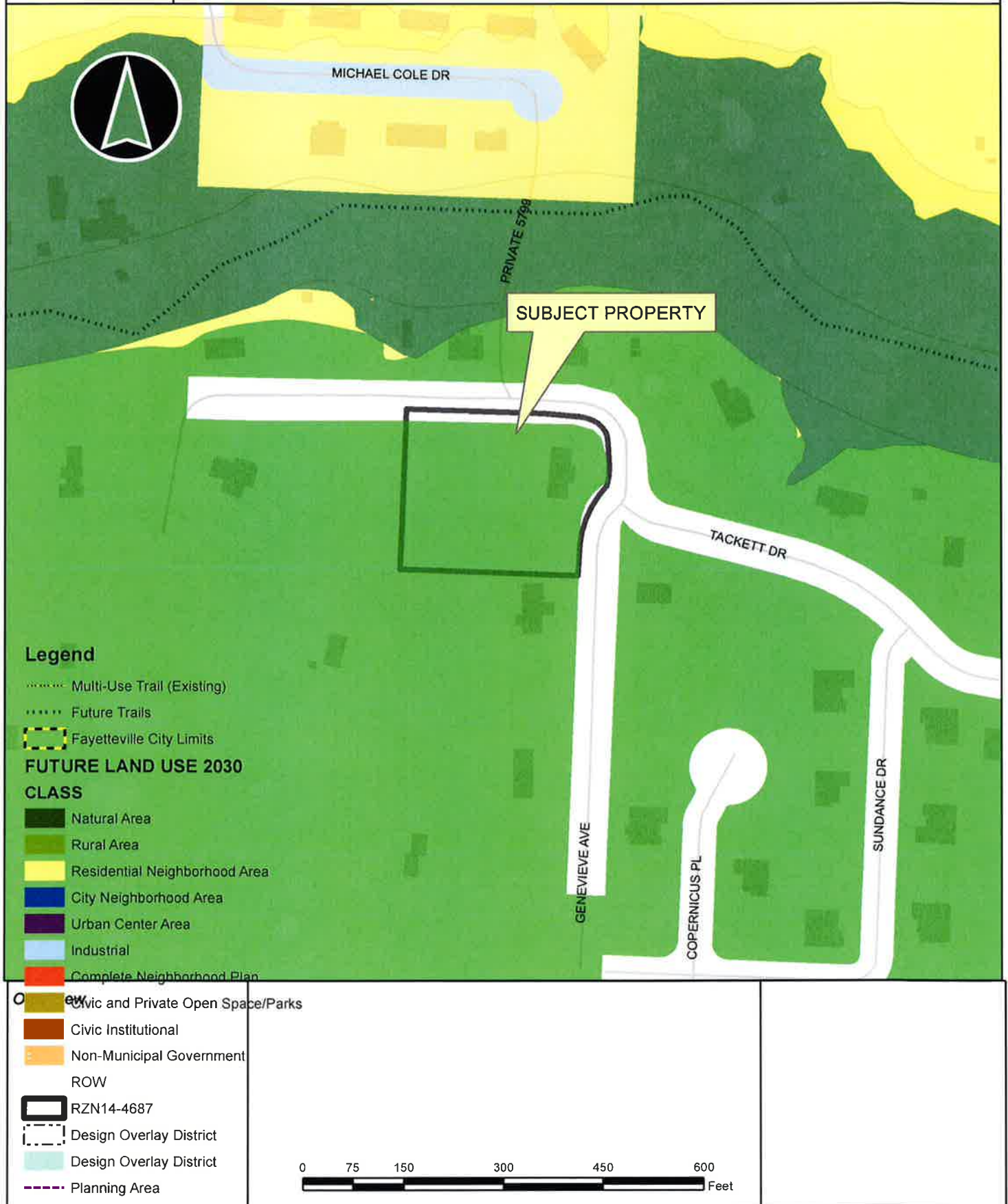
- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area



RZN14-4687

DAVIS

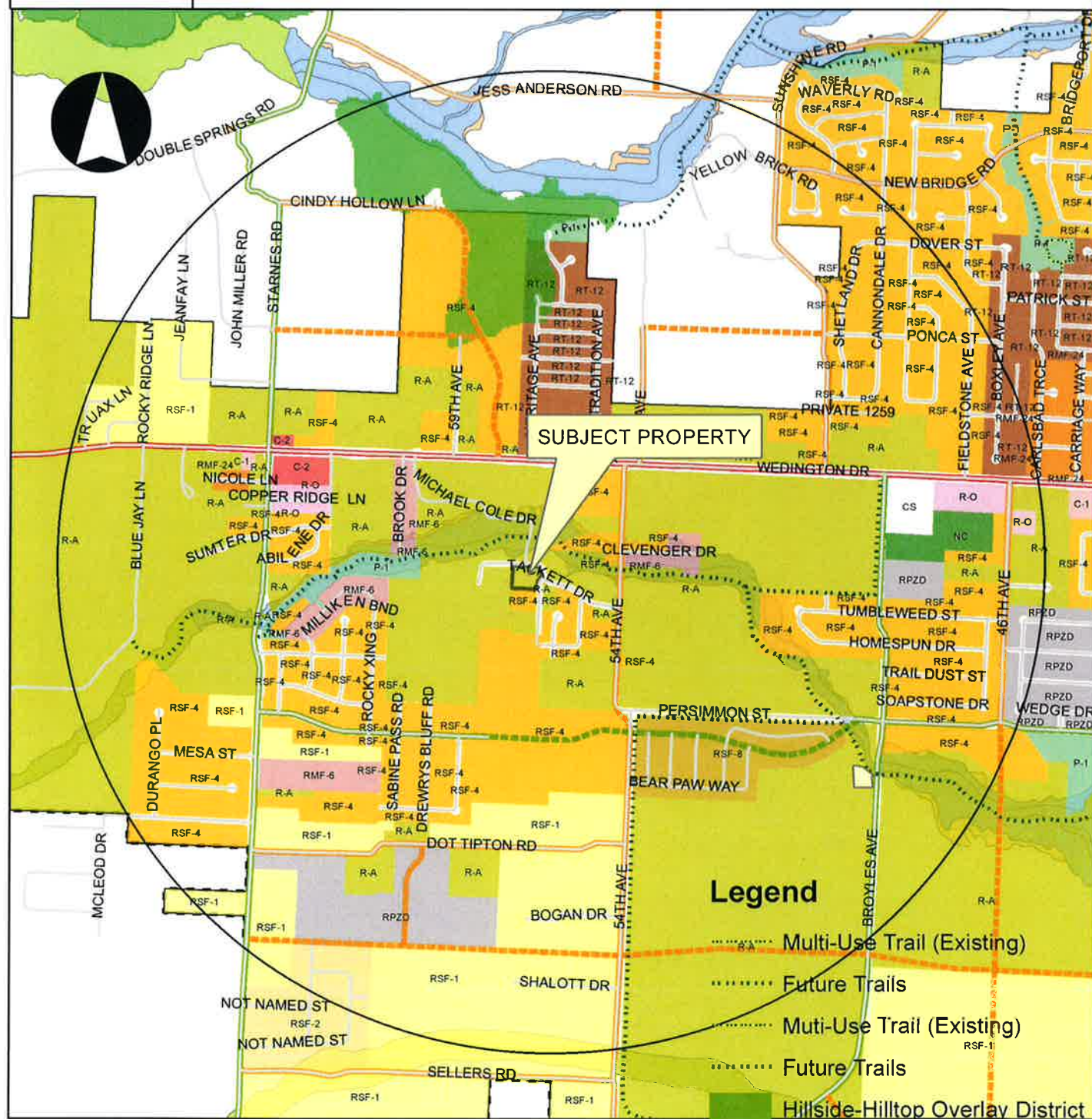
Future Land Use



RZN14-4687

DAVIS

One Mile View



Legend

- Multi-Use Trail (Existing)
- Future Trails
- Multi-Use Trail (Existing)
- Future Trails
- Hillside-Hilltop Overlay District

Overview



Legend

Subject Property

RZN14-4687

Boundary

0 0.25 0.5

Miles

- RZN14-4687
- Design Overlay District
- Planning Area
- Fayetteville

City of Fayetteville Item Review Form

2014-0265

Legistar File Number

07/01/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Quin Thompson

Submitted By

Development Services

Department

Action Required:

14-4725: Rezone (1974 N. GREGG AVE/GIBSON, 367): Submitted by MAHLON GIBSON for property located at 1974 N. GREGG AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 0.65 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI FAMILY, 24 UNITS PER ACRE.

Does this item have a cost? ☐

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution #

Original Contract Number:

Comments:

Jeffery P. Kirk 06-12-2014

Quin Thompson 6-12-2014

Paul A. Beck 6-12-2014

Am. Mahlon 6-13-14
Thomson

4/11/14 RM

ENTERED
6/12/14
PK.

CITY COUNCIL AGENDA MEMO

MEETING OF JULY 1, 2014

TO: Fayetteville City Council

FROM: Quin Thompson, Current Planner

THRU: Andrew Garner, City Planning Director *arg.*

DATE: June 11, 2014

SUBJECT: **RZN 14-4725: Rezone (1974 N. GREGG AVE/GIBSON, 367):** Submitted by MAHLON GIBSON for property located at 1974 N. GREGG AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 0.65 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI FAMILY, 24 UNITS PER ACRE.

RECOMMENDATION:

The Planning Commission and Planning staff recommend approval of an ordinance to rezone the property from RSF-4, Residential Single Family Four Units Per Acre to RMF-24, Residential Multi-family 24 Units Per Acre.

BACKGROUND:

The subject property is located on the east side of Gregg Avenue between Elm and Miller Streets, and contains approximately 0.65 acres within the RSF-4 zoning district. The property is undeveloped and contains a large overhead transmission line and support pole adjacent to the southwest corner of the site. Properties adjacent to this site are multi-family to the north and south, single family to the east, and mixed commercial/industrial to the west.

The ***City Plan 2030 Future Land Use Map*** designates this property as a *City Neighborhood Area*. These areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types. Non-residential uses range in size, variety and intensity from grocery stores and offices to churches, and are typically located at corners and along connecting corridors.

Compatibility: The property is surrounded on three sides by either multi-family or industrial/commercial uses and is not well suited to single-family residential use because of the surrounding land uses and frontage on a high speed roadway. The proposed zoning will allow the owner to utilize the property for higher-density residential development which will be compatible with the neighborhood and consistent with the City's goal for appropriate infill.

DISCUSSION:

On June 9, 2014 the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 6-0-0.

BUDGET/STAFF IMPACT:

N/A

Attachments:

CC Ordinance

Exhibit A

Exhibit B

Planning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 14-4725, FOR APPROXIMATELY 0.65 ACRES, LOCATED AT 1974 N. GREGG AVENUE FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE, TO RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE.

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 changes the zone classification of the following described property from RSF-4, Residential Single Family, 4 units per acre, to RMF-24, Residential Multi-Family, 24 units per acre, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

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

PASSED and APPROVED this day of , 2014.

APPROVED:

ATTEST:

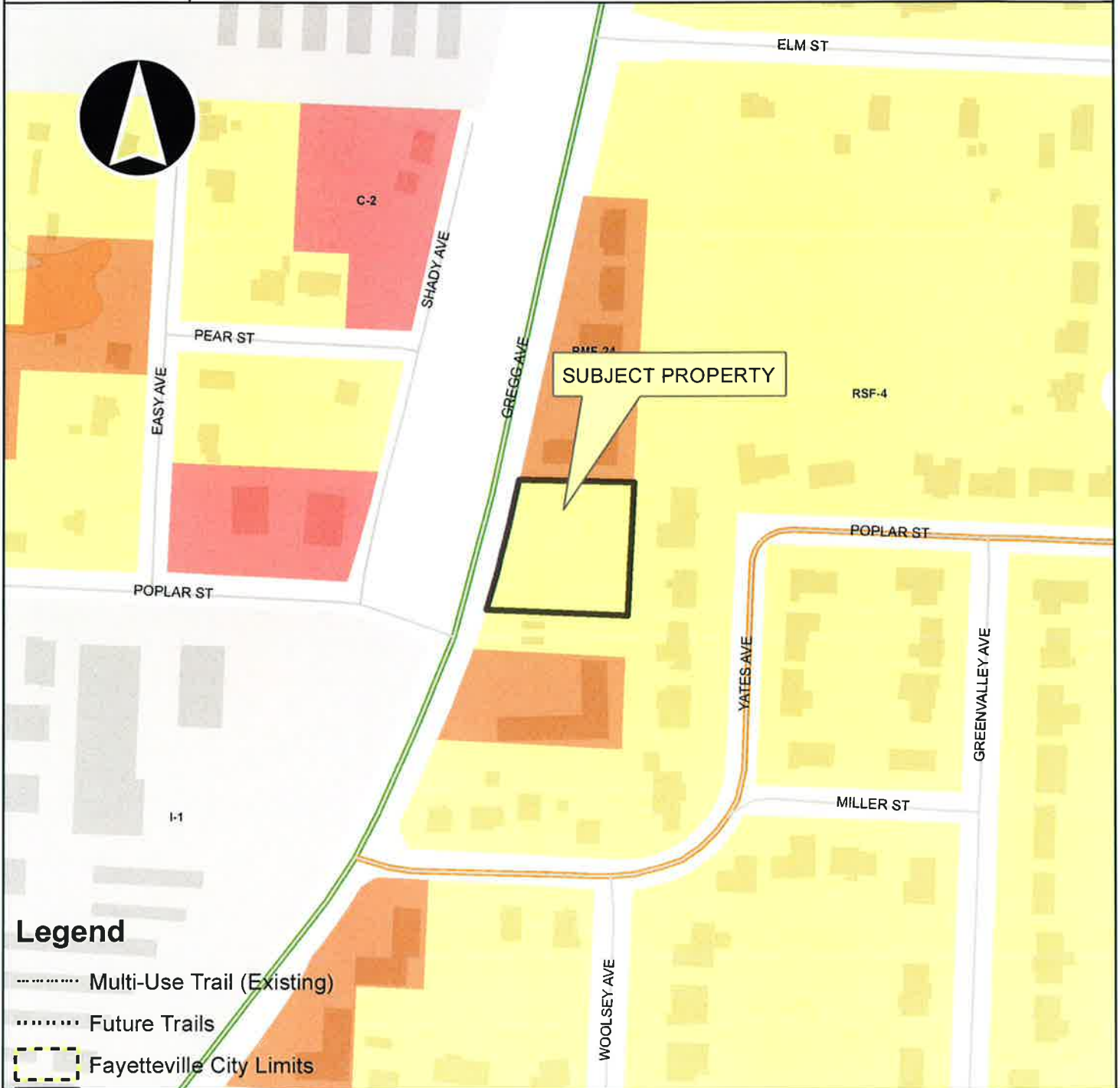
By: _____
LIONELD JORDAN, Mayor

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

RZN14-4725

GIBSON

Close Up View



Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview RZN14-4725

Footprints 2010

Hillside-Hilltop Overlay District

Design Overlay District

Design Overlay District

Planning Area



EXHIBIT 'B'

14-4725

Lots numbered Seven (7) and Eight (8) in Block numbered Two (2) of the revised plot of lots Three (3) to Nine (9) inclusive of block Six (6) of Parker's Plat of Valley View Acres, as per plat of said addition on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, AR. Assessor's parcel Numbers are 756-09567-000 and 756-09568-000.



PLANNING COMMISSION MEMO

TO: City of Fayetteville Planning Commission

THRU: Andrew Garner, Planning Director

FROM: Quin Thompson, Current Planner

MEETING DATE: ~~June 09, 2014~~ Updated June 11, 2014

SUBJECT: **RZN 14-4725: Rezone (1974 N. GREGG AVE/GIBSON, 367):** Submitted by MAHLON GIBSON for property located at 1974 N. GREGG AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE and contains approximately 0.65 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI FAMILY, 24 UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN 14-4725** to City Council with a recommendation for approval.

BACKGROUND:

The subject property is located on the east side of Gregg Avenue between Elm and Miller Streets, and contains approximately 0.65 acres within the RSF-4 zoning district. The property is undeveloped and contains a large overhead transmission line and support pole adjacent to the southwest corner of the site. Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Multi-Family Residential	RMF-24, Residential Multi-family/24 Units per Acre
South	Multi-Family Residential	RMF-24, Residential Multi-family/24 Units per Acre
East	Single-family Residential	RSF-4, Residential Single-family, 4 units per acre
West	Commercial/Light Industry/Single-family Residential	RSF-4, Residential Single-family, 4 units per acre/ C-2, Thoroughfare Commercial/I-1, Light Industrial & Heavy Commercial

Request: The request is to rezone the property from RSF-4, Residential Single-family / 4 Units per Acre to RMF-24, Residential Multi-family / 24 Units per Acre. The applicant has stated that the rezoning will allow the property to be developed in the future with a use appropriate for the neighborhood.

Public Comment: Staff has not received public comment.

INFRASTRUCTURE:

- Streets:** The site has access to Gregg Avenue, a four lane, fully improved Minor Arterial roadway. Improvements to this road would be determined at the time of development.
- Water:** Public water is accessible to these parcels. An 8" water main exists in the Gregg Avenue right of way, and an additional 2" main crosses the property and is available to both parcels along the east property boundary
- Sewer:** Sanitary sewer is available to the site. A 6" sanitary sewer main exists in the Gregg Avenue right of way. Another 6" sewer main is available on the east property boundary. All parcels slated for rezoning can be served by these two lines.
- Drainage:** Any additional improvements or requirements for drainage will be determined at time of development. The property is not affected by either the 100-year floodplain or the Streamside Protection Zone.
- Fire:** This development will be protected by Engine 2 located at 708 N Garland Ave. It is 1.5 miles from the station with an anticipated response time of 3 minutes to the beginning of the development. The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.
- Police:** The Police Department did not express any concerns with this request.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2030 Future Land Use Plan designates this site as **City Neighborhood Area**.* These areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types. Non-residential uses range in size, variety and intensity from grocery stores and offices to churches, and are typically located at corners and along connecting corridors.

DISCUSSION:

FINDINGS OF THE STAFF

RECOMMENDATION: Staff recommends that RZN 14-4725 be forwarded to the City Council with a recommendation for approval.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>June 09, 2014</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: <u>Chesser</u>	Second: <u>Winston</u>	Vote: <u>6-0-0</u>	
CITY COUNCIL ACTION:		Required	<u>YES</u>
Date: <u>July 01, 2014</u>	☐ Approved	☐ Denied	

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: This property is currently undeveloped land. The proposal to rezone the property to RMF-24 will allow the property to be developed for residential use consistent with surrounding land uses. The City Plan 2030 Future Land Use Map designates this area as City Neighborhood Area. This designation encourages a wide range of density and use and staff finds that the proposed zoning is consistent with the City Neighborhood designation.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed rezoning is justified due to the fact that the area's current single-family residential zoning designation is potentially undesirable with surrounding properties and traffic patterns. Gregg Avenue is a high volume Master Street Plan designated Minor Arterial. The property is surrounded on three sides by either multi-family or industrial/commercial uses, is not well suited to single-family residential use. The proposed zoning will allow the owner to utilize the property for appropriate residential development which will be compatible with the neighborhood.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The site access has access to Gregg Avenue, an improved four lane street. The proposed zoning would allow uses that would increase traffic over the existing zoning. Any curb cut on this site may cause traffic danger due to high speed traffic and this site's location immediately adjacent to a signalized intersection at Gregg and Poplar. Street improvements will be assessed at the time of development.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Rezoning the property from single-family to multi-family use will allow for the development of more residential density, however development should

not undesirably increase the load on public services. The Police and Fire Departments have expressed no objections to the proposal.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
- a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

BUDGET/STAFF IMPACT:

None

Attachments:

Unified Development Code sections 161.07 & 161.14

Request Letter

Fire Comments

One Mile Map

Close Up Map

Current Land Use Map

Future Land Use Map

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 41	Accessory dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 9	Two-family dwellings
Unit 12	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cottage Housing Development

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq. ft.

Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.
Hillside Overlay District Lot minimum width	60 ft.	70 ft.
Hillside Overlay District Lot area minimum	8,000 sq. ft.	12,000 sq. ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
15 ft.	5 ft.	15 ft.

(F) *Building height regulations.*

Building Maximum	Height	45 ft.
------------------	--------	--------

Height regulations. Structures in this District are limited to a building height of 45 feet. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses, (ord. # 4858).

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06; Ord. 5028, 6-19-07; Ord. 5128, 4-15-08; Ord. 5224, 3-3-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11)

161.14 District RMF-24, Residential Multi-Family – Twenty-Four Units Per Acre

(A) *Purpose.* The RMF-24 Multi-family Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 26	Multi-family dwellings

Unit 44	Cottage Housing Development
---------	-----------------------------

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 25	Professional offices
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	24 or less
----------------	------------

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a Manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.
Professional offices	100 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a mobile home park	4,200 sq. ft.
Townhouses:	
Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	7,000 sq. ft.
Three or more	9,000 sq. ft.

Fraternity or Sorority	2 acres
Professional offices	1 acre

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Apartments:	
No bedroom	1,700 sq. ft.
One bedroom	1,700 sq. ft.
Two bedroom	2,000 sq. ft.
Fraternity or Sorority	1,000 sq. ft. per resident

(E) *Setback requirements.*

Front	Side	Rear
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	8 ft.	25 ft.

Cross reference(s)--Variance, Ch. 156.

(F) *Building height regulations.*

Building Height	30/45/60ft.*
Maximum	

*A building or a portion of a building that is located between 0 and 10 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 30 feet, between 10-20 feet from the master street plan right-of-way a maximum height of 45 feet and buildings or portions of the building set back greater than 20 feet from the master street plan right-of-way shall have a maximum height of 60 feet.

Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district, an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* None.

(H) *Minimum buildable street frontage.* 50% of the lot width.

(Code 1965, App. A., Art. 5(III); Ord. No. 2320, 4-6-77; Ord. No. 2700, 2-2-81; Code 1991, §160.033; Ord. No. 4100, §2 (Ex. A), 6-18-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5079, 11-20-07; Ord. 5224, 2-3-08; Ord. 5262, 8-4-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11; Ord. 5495, 4-17-12; Ord. 5592, 6-18-13; Ord. 5664, 2-18-14)



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS



FIRE DEPARTMENT
303 West Center Street
Fayetteville, AR 72701
P (479) 575-8365 F (479) 575-0471

Zoning Review

To: Jesse Fulcher
From: Will Beeks
Date: May 8, 2014
Re: RZN 14-4725

This development will be protected by Engine 2 located at 708 N Garland Ave.
It is 1.5 miles from the station with an anticipated response time of 3 minutes to the beginning of the development.
The Fayetteville Fire Department does not feel this development will affect our calls for service or our response times.

If you have any questions please feel free to contact me.

Will Beeks
Assistant Fire Marshal
Fayetteville Fire Department

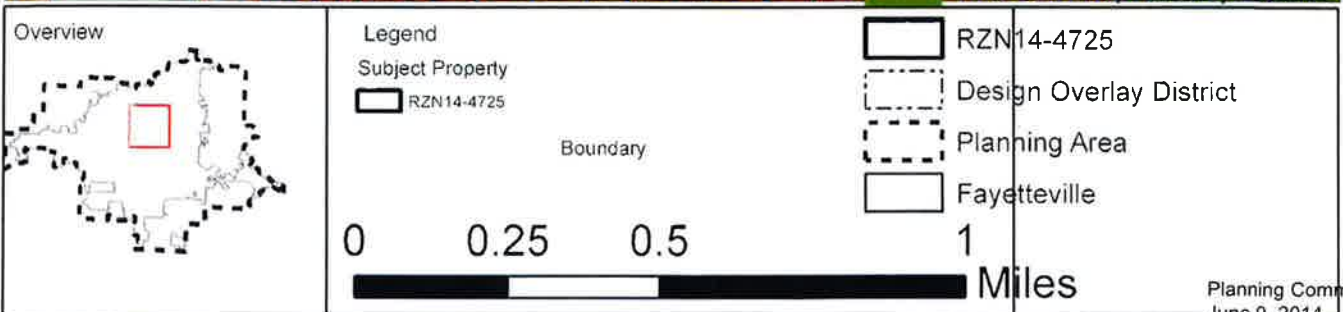
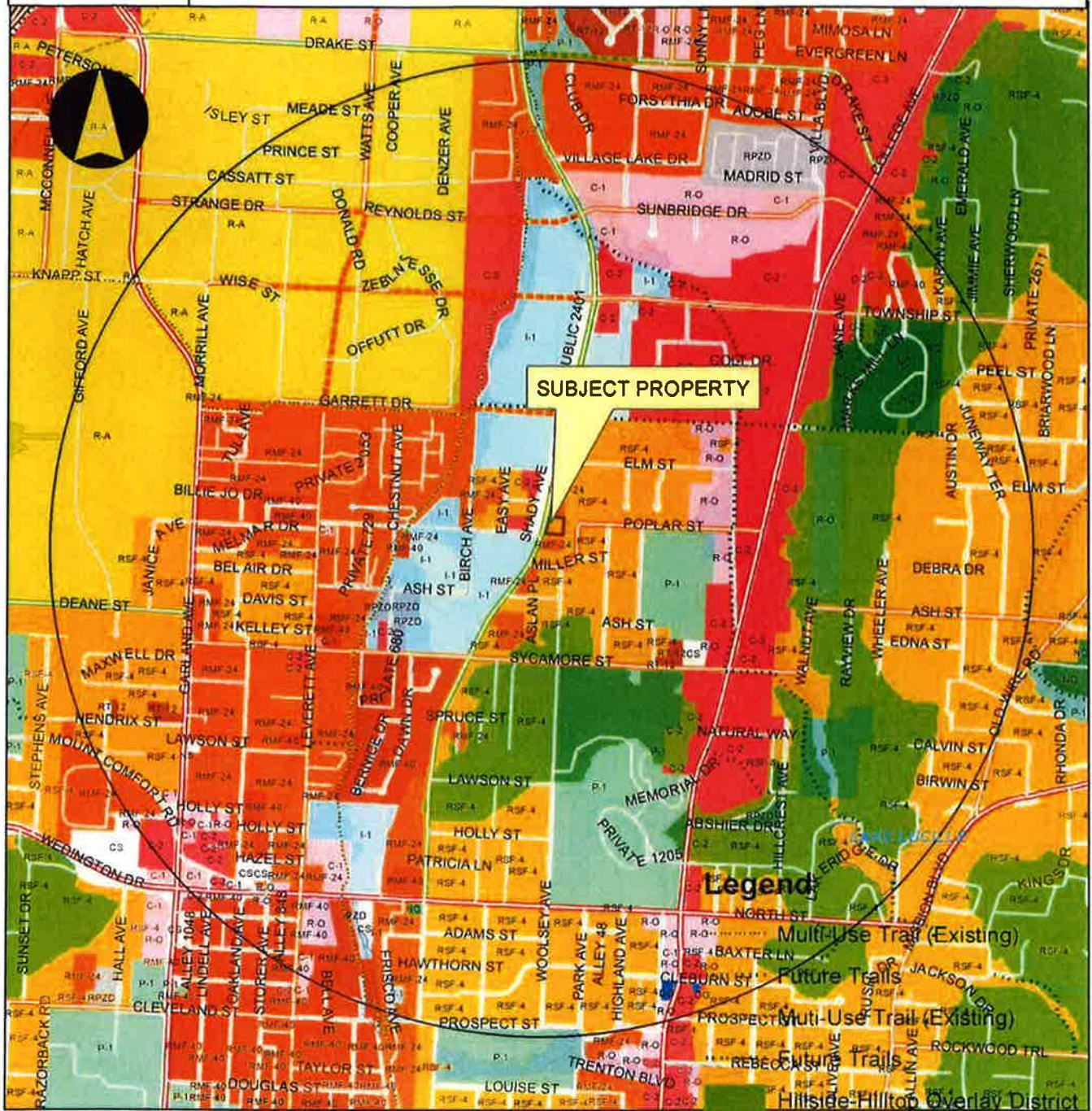
The current ownership of this property is in Mahlon G. Gibson and Sondra A. Gibson, husband and wife. The reason for the zoning change is to let it conform to the surrounding properties and the development of the area that has occurred in recent years. Adjoining properties on both sides are RMF, and all property on North Gregg Street from the intersection with Ash Street north to the Fulbright Expressway is either for apartment or commercial use. The rezoning of this property relates well with the surrounding properties in every way, and water, sewer and gas lines are all present.

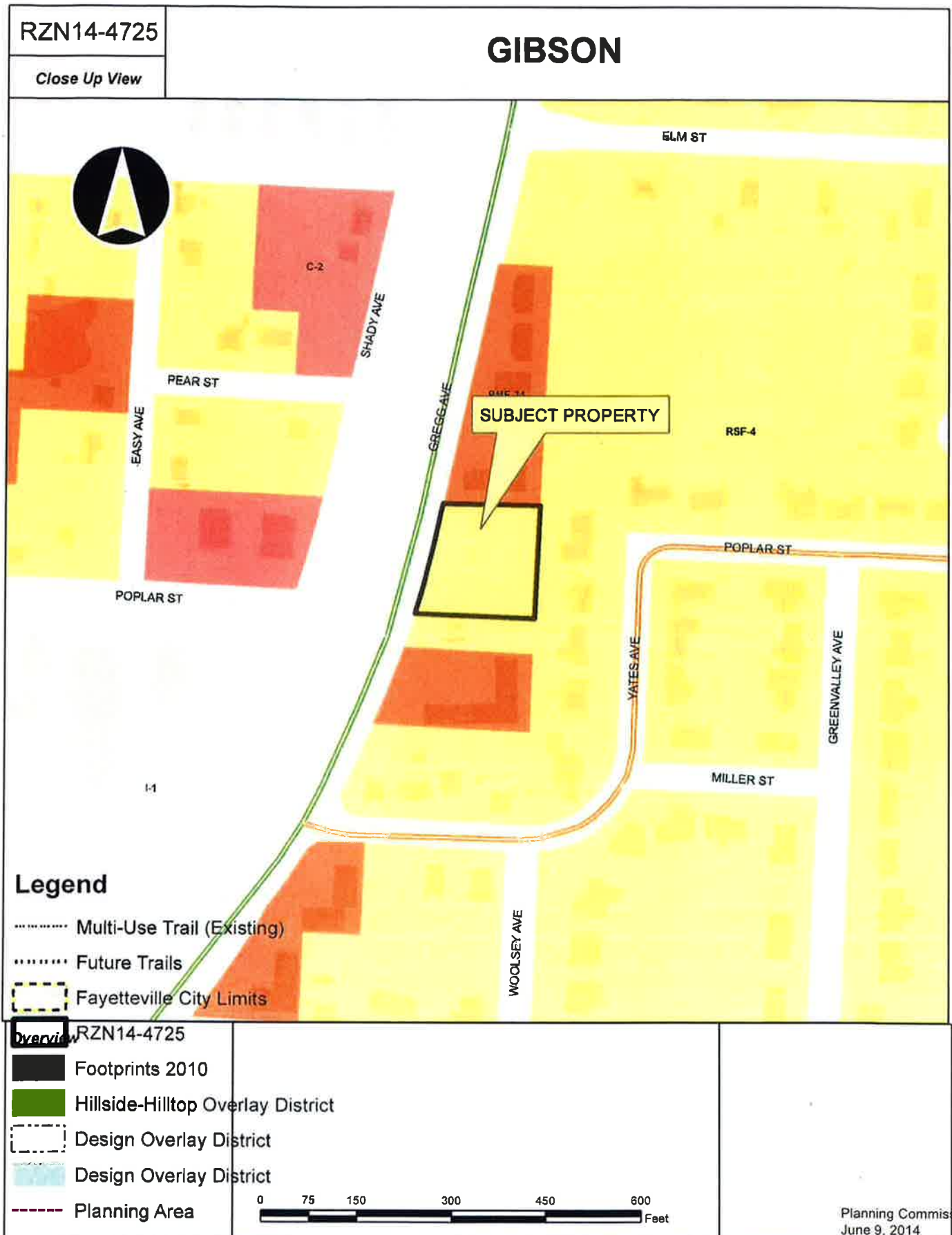
In short, there is no practical use for this property as it is now zoned. The requested rezoning is consistent with the land use in the area and will permit it to be put to use in a manner compatible with the surrounding area.

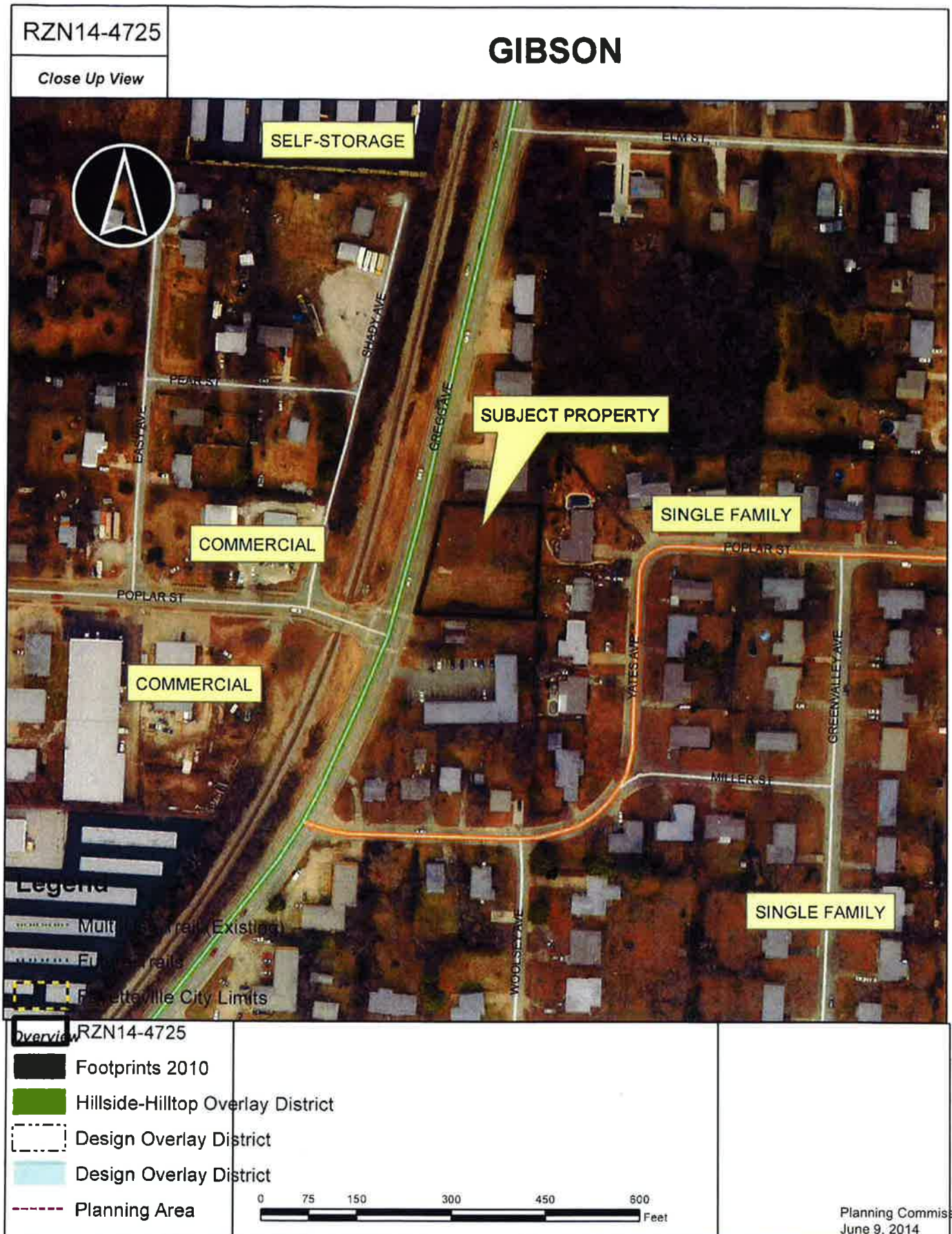
RZN14-4725

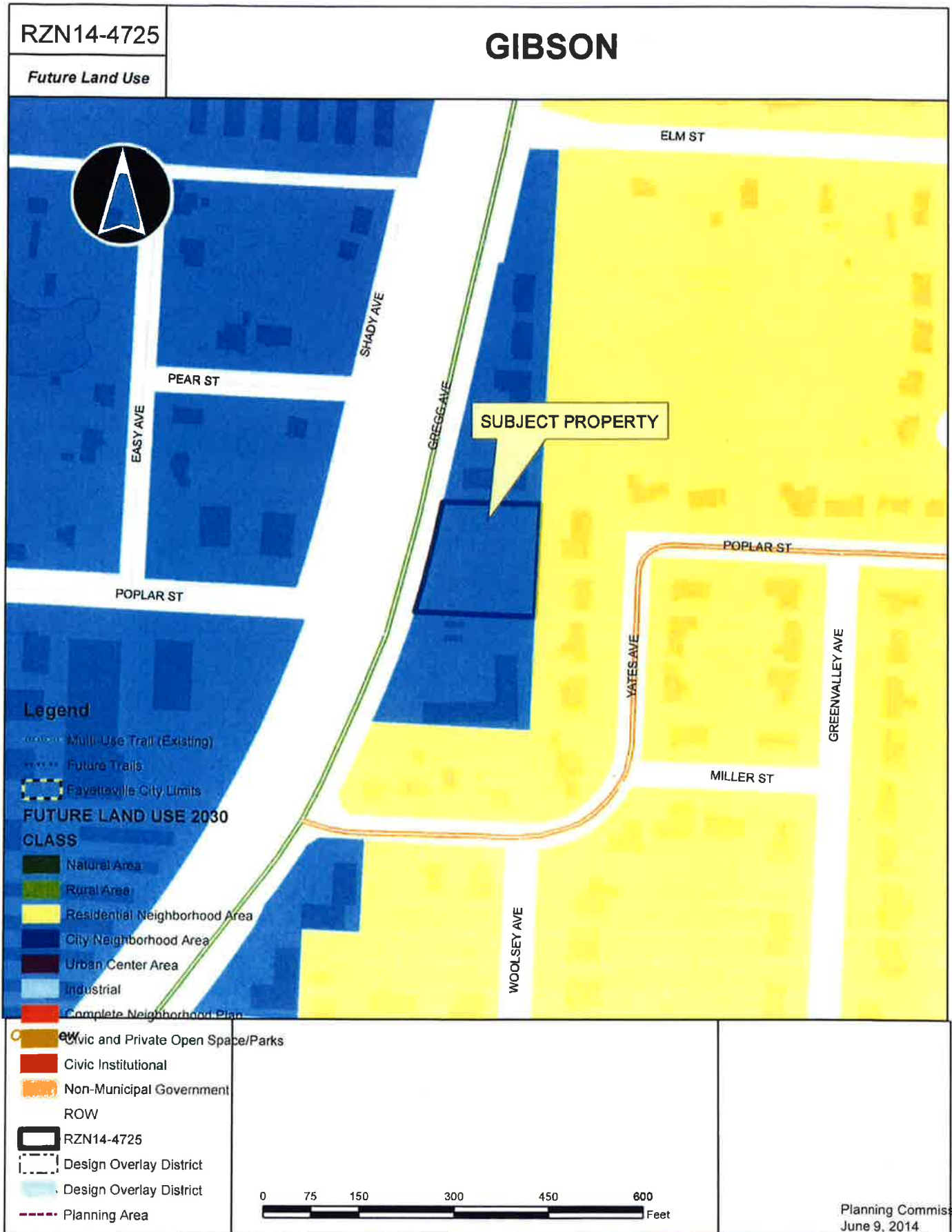
GIBSON

One Mile View









City of Fayetteville Item Review Form

2014-0263

Legistar File Number

07/01/2014

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Quin Thompson

Submitted By

Development Services

Department

Action Required:

VAC 14-4740: Vacation (514 W. MLK BLVD/FILBECK, 523): Submitted by BLEW & ASSOCIATES for property located at 514 W. MLK BLVD. The property is zoned MSC, MAIN STREET/CENTER and contains approximately 0.76 acres. The request is to vacate an existing utility easement.

Does this item have a cost? ☐ No

Cost of this request

Category or Project Budget

Program or Project Name

Account Number

Funds Used to Date

Program or Project Category

\$0.00

Project Number

Remaining Balance

Fund Name

Budgeted Item? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution #

Original Contract Number:

Comments:



Long Clark 06-11-2014

OK [signature] 6-12-14

Paul A. Becker 6-12-2014

Long Clark 6-12-14

[signature]

CITY COUNCIL AGENDA MEMO

MEETING OF JULY 1, 2014

TO: Fayetteville City Council

THRU: Andrew Garner, City Planning Director *oneg*

FROM: Quin Thompson, Current Planner

DATE: June 10, 2014

SUBJECT: **VAC 14-4740: Vacation (514 W. MLK BLVD/FILBECK, 523):** Submitted by BLEW & ASSOCIATES for property located at 514 W. MLK BLVD. The property is zoned MSC, MAIN STREET/CENTER and contains approximately 0.76 acres. The request is to vacate existing utility easements.

RECOMMENDATION:

Staff and the Planning Commission recommend approval of an ordinance to vacate utility easements as requested.

BACKGROUND:

The subject 0.76-acre property is at 514 West Martin Luther King Boulevard, is zoned MSC, Main Street Centre and is developed with a small auto repair shop and storage yard that is not in use. There are existing utility easements that entirely bisect the site including the existing building. The applicant requests vacation of these utility easements, as indicated on the attached survey.

DISCUSSION:

On June 9, 2014 the Planning Commission forwarded this item to the City Council with a recommendation of approval with a vote of 6-0-0.

BUDGET/STAFF IMPACT:

N/A

Attachments:

CC Ordinance
Exhibit A
Exhibit B
Planning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 14-4740 SUBMITTED
BY BLEW AND ASSOCIATES FOR PROPERTY LOCATED
AT 514 W. MLK BLVD TO VACATE AN EXISTING UTILITY
EASEMENT.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the platted utility easements are not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following portions of utility easements described in Exhibit "B" attached hereto and made a part thereof.

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED and **APPROVED** this day of , 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

EXHIBIT 'A'

14-4740

C. 3
VAC 14-4740 (514 W.
MLK BLVD/Filbeck)
Page 4 of 20

VAC14-4740

Close Up View

FILBECK

PRAIRIE ST



DG

GREGG AVE

SUBJECT PROPERTY

P

MARTIN LUTHER KING BLVD

MSC

Legend

- Multi-Use Trail (Existing)
- Future Trails
- Fayetteville City Limits

Overview

VAC14-4740

- Footprints 2010
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area

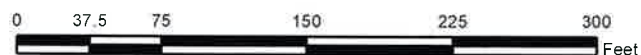


EXHIBIT "B"
VAC 14-4740

PROPOSED EASEMENT VACATION

AN EXISTING UTILITY EASEMENT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

BEGINNING AT A POINT THAT IS N89°57'29"E 25.00', N00°02'31"W 15.03' AND S88°03'50"E 84.54' FROM THE SOUTHWEST CORNER OF LOT 16 AND RUNNING THENCE N00°01'23"E 42.83'; THENCE S89°55'39"W 84.54'; THENCE N00°02'31"W 10.00'; THENCE N89°55'39"E 84.55'; THENCE N00°01'23"E 130.40'; THENCE N89°57'29"E 20.00'; THENCE S00°01'23"W 130.39'; THENCE N89°55'39"E 64.23'; THENCE S00°04'21"E 10.00'; THENCE S89°55'39"W 64.25'; THENCE S00°01'23"W 43.53'; THENCE N88°03'50"W 20.01' TO THE POINT OF BEGINNING.



PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Quin Thompson, Current Planner

MEETING DATE: ~~June 9, 2014~~ Updated June 10, 2014

SUBJECT: **VAC 14-4740: Vacation (514 W. MLK BLVD/FILBECK, 523):** Submitted by BLEW & ASSOCIATES for property located at 514 W. MLK BLVD. The property is zoned MSC, MAIN STREET/CENTER and contains approximately 0.76 acres. The request is to vacate an existing utility easement.

RECOMMENDATION:

Staff recommends forwarding **VAC 14-4740** to the City Council with a recommendation for approval.

BACKGROUND:

Property and background: The subject 0.76-acre property is at 514 West Martin Luther King Boulevard, is zoned MSC, Main Street Centre and is developed with a small auto repair shop and storage yard. There are existing utility easements that entirely bisect the site including the existing building. Surrounding land use and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Single family residence	DG, Downtown General
South	Farmer's Co-op	MSC, Main Street Center
East	Frisco multi-use trail	P-1, Institutional
West	Screen printing shop	MSC, Main Street Center

Proposal: The applicant requests vacation of utility easements that bisect the site, as indicated on the attached survey.

DISCUSSION:

Vacation Approval: The applicant has submitted the required vacation forms to the City utility departments and applicable franchise utilities, with no objections.

UTILITIES

Cox Communications

RESPONSE

No objections

AEP/SWEPCO

No objections

Source Gas

No objections

AT&T

No objections

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer

No objections

Public Comment:

No public comment has been received.

Recommendation:

Staff recommends forwarding **VAC 14-4740** to the City Council with a recommendation for approval subject to the following conditions:

Conditions of Approval:

1. Any relocation or damage to utilities shall be at the owner/developer's expense.

PLANNING COMMISSION ACTION: Required			
Date: <u>June 9, 2014</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: <u>Winston</u>	Second: <u>Autry</u>	Vote: <u>6-0-0</u>	Note: <u>On the consent agenda.</u>
CITY COUNCIL ACTION: Required			
Date: _____	☐ Approved	☐ Denied	

BUDGET/STAFF IMPACT:

None

Attachments:

Request Letter

Petition to Vacate

Utility Approvals

Easement Vacation Exhibit

One Mile Map

Close Up Map



Blew Associates, P.A.
Civil Engineers Professional Land Surveyors

524 W. Sycamore Street Suite #4 Fayetteville, AR 72703
PH: 479-443-4506 * FAX: 479-582-1883
<http://www.blewinc.com>

April 30, 2014

City of Fayetteville Planning Commission and
City of Fayetteville City Council.

We would like to present for your consideration a request for an easement
vacation on behalf of Krystal Filbeck

We ask for a vacation of the areas as shown on the attached drawing where
during the process of a property boundary survey, the main existing building
were found to encroach upon an existing utility easement.

We would request a vacation of these areas to remove the buildings from
encroaching upon these easements.

Thank you for your consideration on this matter.

Scott Blacksher
Office Manager

**PETITION TO VACATE AN EASEMENT LOCATED IN BLOCK 21, FERGUSON'S ADDITION,
CITY OF FAYETTEVILLE, ARKANSAS**

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the easement hereinafter sought to be abandoned and vacated, lying in Block 21, Ferguson's Addition, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate an easement which is described as follows:

AN EXISTING UTILITY EASEMENT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT THAT IS N89°57'29"E 25.00', N00°02'31"W 15.03' AND S88°03'50"E 84.54' FROM THE SOUTHWEST CORNER OF LOT 16, BLOCK 21 OF FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AND RUNNING THENCE N00°01'23"E 42.83'; THENCE S89°55'39"W 84.54'; THENCE N00°02'31"W 10.00'; THENCE N89°55'39"E 84.55'; THENCE N00°01'23"E 130.40'; THENCE N89°57'29"E 20.00'; THENCE S00°01'23"W 130.39'; THENCE N89°55'39"E 64.23'; THENCE S00°04'21"E 10.00'; THENCE S89°55'39"W 64.25'; THENCE S00°01'23"W 43.53'; THENCE N88°03'50"W 20.01' TO THE POINT OF BEGINNING.

That abutting real estate affected by said abandonment of the easement are a part of block 21, Ferguson's Addition, City of Fayetteville used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described easement.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for the respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from easements of the public for the use of said easement.

Dated this 19th day of MAY, 2014.

Printed Name


Signature

Printed Name

Signature

UTILITY RELEASE FORM

General Utility Easement, Drainage Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company

Cox Communications

Date

4/25/2014

Requested Vacation

Job# 14-203

I have been notified of the petition to vacate the following described as follows:

2151 N. 1st St. (S. 1st St.)

Legal
Description

2151 N. 1st St. (S. 1st St.)

UTILITY COMPANY COMMENTS (Send release form to the applicant's provided address).

- ☐ No objections to the vacation(s) described above.
- ☒ No objections to the vacation(s) described above, provided the following described easements are retained.
- ☐ Objects to the vacation(s) described above, reason described below.

Describe
reasons for
objection or
easements to be
retained

Any damage to or relocation of existing facilities will be at the owners/developers expense.

Signature of Utility Company Representative

Construction Planner III NWA
Title

UTILITY RELEASE FORM

General Utility Easement, Drainage Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company

AEP SWEPCO

Date

3-26-14

Requested Vacation

I have been notified of the petition to vacate the following described as follows:

Utility Easement

Legal
Description

See Attached Survey

UTILITY COMPANY COMMENTS (Send release form to the applicant's provided address).

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided the following described easements are retained.
- ☐ Objects to the vacation(s) described above, reason described below.

Describe
reasons for
objection or
easements to be
retained

Signature of Utility Company Representative

Title

DISTRIBUTION ENGINEER

UTILITY RELEASE FORM

General Utility Easement, Drainage Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company

Source Gas

Date

3/26/14

Requested Vacation

I have been notified of the petition to vacate the following described as follows:

Utility Easement

Legal
Description

See Attached Survey

UTILITY COMPANY COMMENTS (Send release form to the applicant's provided address).

☒ No objections to the vacation(s) described above.

☐ No objections to the vacation(s) described above, provided the following described easements are retained.

☐ Objects to the vacation(s) described above, reason described below.

Describe
reasons for
objection or
easements to be
retained

Signature of Utility Company Representative

Title

Field Coord

UTILITY RELEASE FORM

General Utility Easement, Drainage Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company

AT&T

Date

4/25/2014

Requested Vacation

I have been notified of the petition to vacate the following
described as follows:

Utility Easement

Legal
Description

on Annual Survey

UTILITY COMPANY COMMENTS (Send release form to the applicant's provided address).

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided the following described easements are retained.
- ☐ Objects to the vacation(s) described above, reason described below.

Describe
reasons for
objection or
easements to be
retained

Signature of Utility Company Representative

Jarrod Lynne Rhodes

Manager OSP Engineering/Design AT&T
Title

UTILITY RELEASE FORM

General Utility Easement, Drainage Easement, Public Access Easement, Alley, Street, R.O.W.

Utility Company

CITY OF FAYETTEVILLE
WATER & SEWER

Date

14 MAY 2014

Requested Vacation

EASEMENT WEST OF NEW TRAIL CROSSING ON MLK

I have been notified of the petition to vacate the following described as follows:

UTILITY RELEASE

Legal
Description

SEE ATTACHED SURVEY

UTILITY COMPANY COMMENTS (Send release form to the applicant's provided address).

- ☒ No objections to the vacation(s) described above.
- ☐ No objections to the vacation(s) described above, provided the following described easements are retained.
- ☐ Objects to the vacation(s) described above, reason described below.

Describe
reasons for
objection or
easements to be
retained



Signature of Utility Company Representative

INTERIM UTILITY DIRECTOR

Title

EASEMENT VACATION EXHIBIT

Urban Notes:

1. The proposed easement is shown in red on the plan.

2. The easement is shown in red on the plan.

3. The easement is shown in red on the plan.

4. The easement is shown in red on the plan.

5. The easement is shown in red on the plan.

6. The easement is shown in red on the plan.

7. The easement is shown in red on the plan.

8. The easement is shown in red on the plan.

9. The easement is shown in red on the plan.

10. The easement is shown in red on the plan.

Planning & Service Information:

1. The proposed easement is shown in red on the plan.

2. The easement is shown in red on the plan.

3. The easement is shown in red on the plan.

4. The easement is shown in red on the plan.

5. The easement is shown in red on the plan.

6. The easement is shown in red on the plan.

7. The easement is shown in red on the plan.

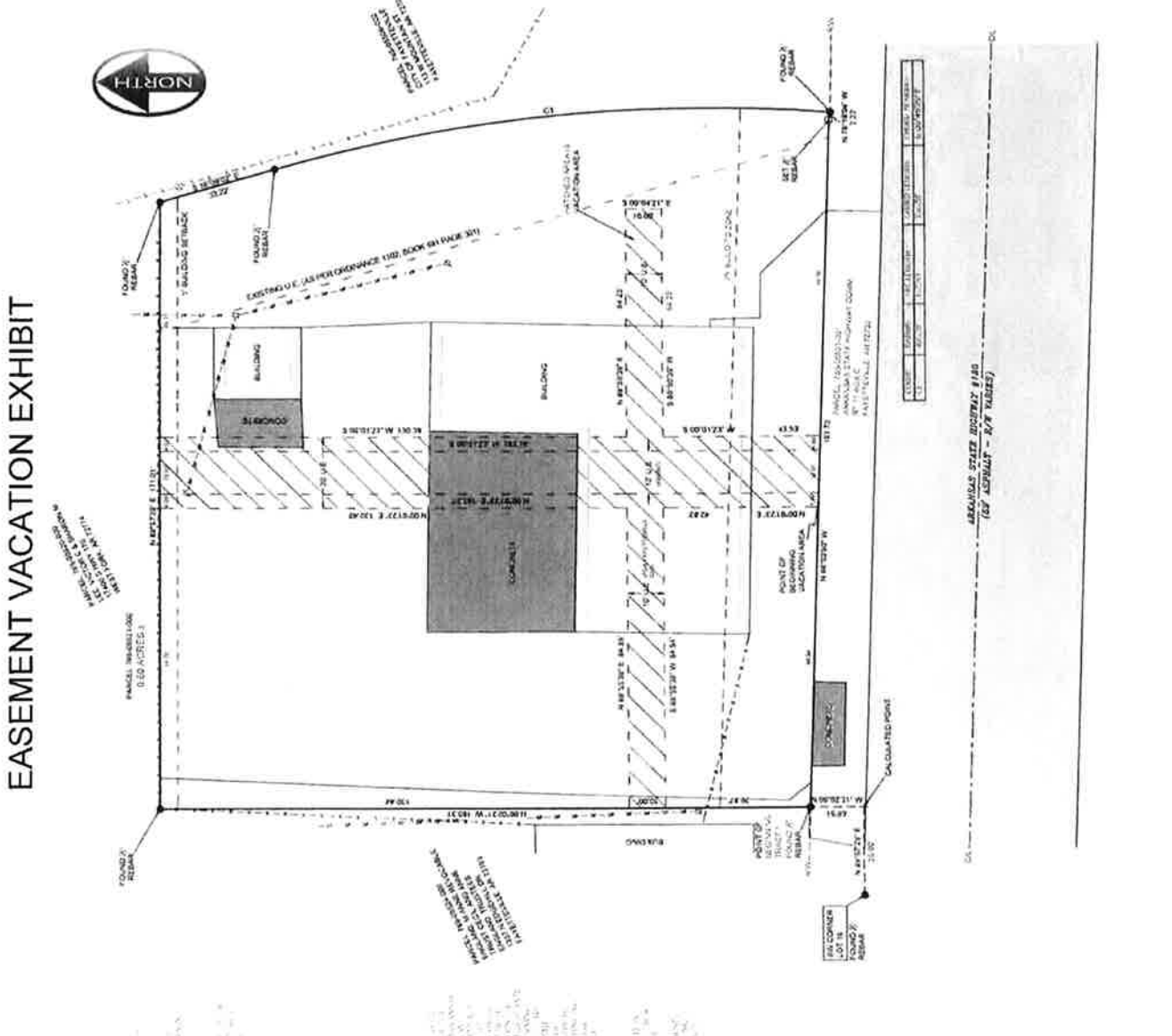
8. The easement is shown in red on the plan.

9. The easement is shown in red on the plan.

10. The easement is shown in red on the plan.

BLU & ASSOCIATES, PA
CIVIL ENGINEERS & LAND SURVEYORS
324 W. 3RD AVE. 3RD FL. SUITE 4
13711 VILLAGE GREEN, SUITE 400
ALBANY, NY 12207-4400
TEL: 518-486-1100
FAX: 518-486-1101
www.blusurvey.com

DATE: 06/03/2014
BY: [Signature]
CHECKED: [Signature]
SCALE: AS SHOWN



Miscellaneous Notes:

1. The proposed easement is shown in red on the plan.

2. The easement is shown in red on the plan.

3. The easement is shown in red on the plan.

4. The easement is shown in red on the plan.

5. The easement is shown in red on the plan.

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7. The easement is shown in red on the plan.

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9. The easement is shown in red on the plan.

10. The easement is shown in red on the plan.

Survey Description:

1. The proposed easement is shown in red on the plan.

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9. The easement is shown in red on the plan.

10. The easement is shown in red on the plan.

Legend of Symbols & Abbreviations:

1. The proposed easement is shown in red on the plan.

2. The easement is shown in red on the plan.

3. The easement is shown in red on the plan.

4. The easement is shown in red on the plan.

5. The easement is shown in red on the plan.

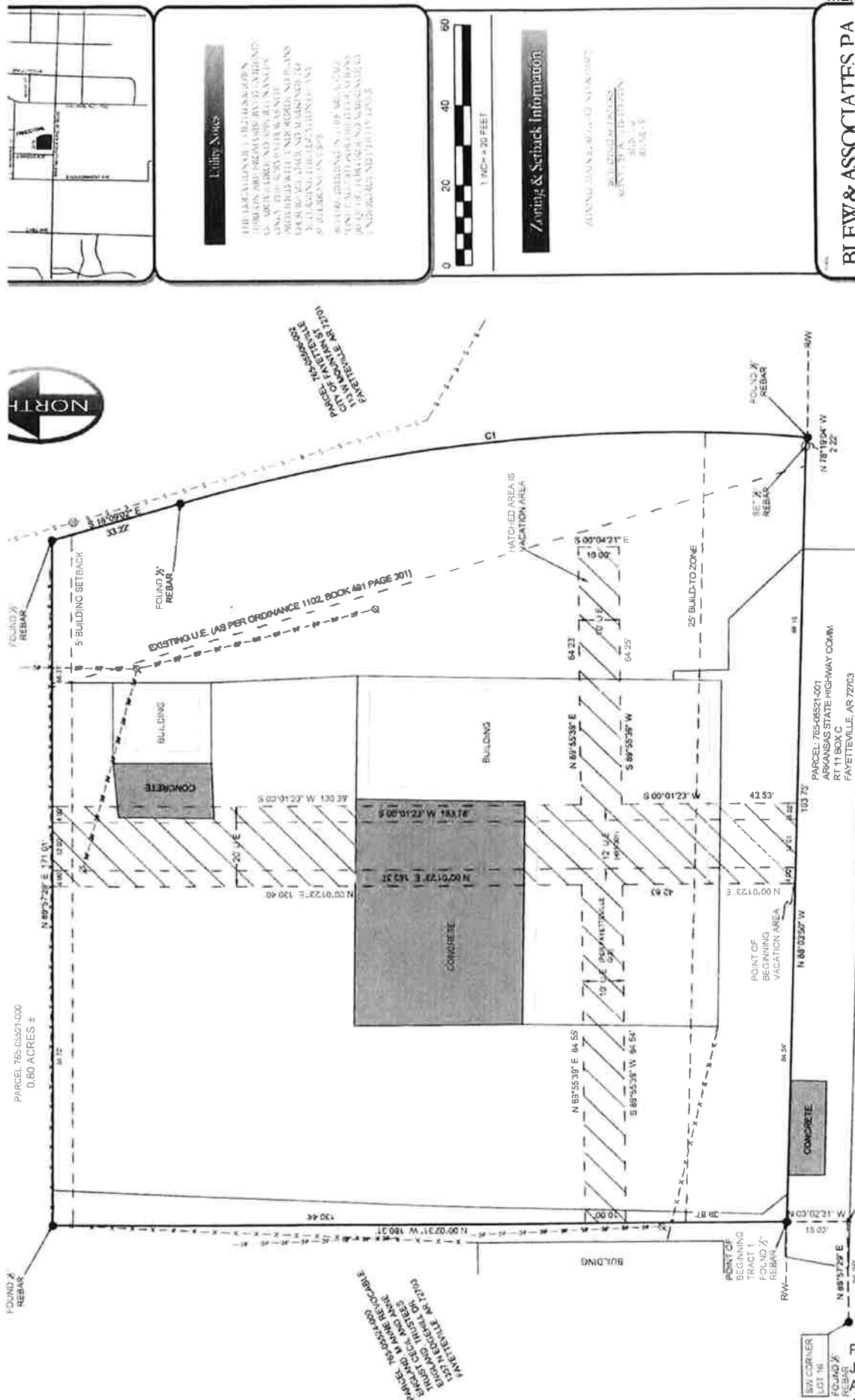
6. The easement is shown in red on the plan.

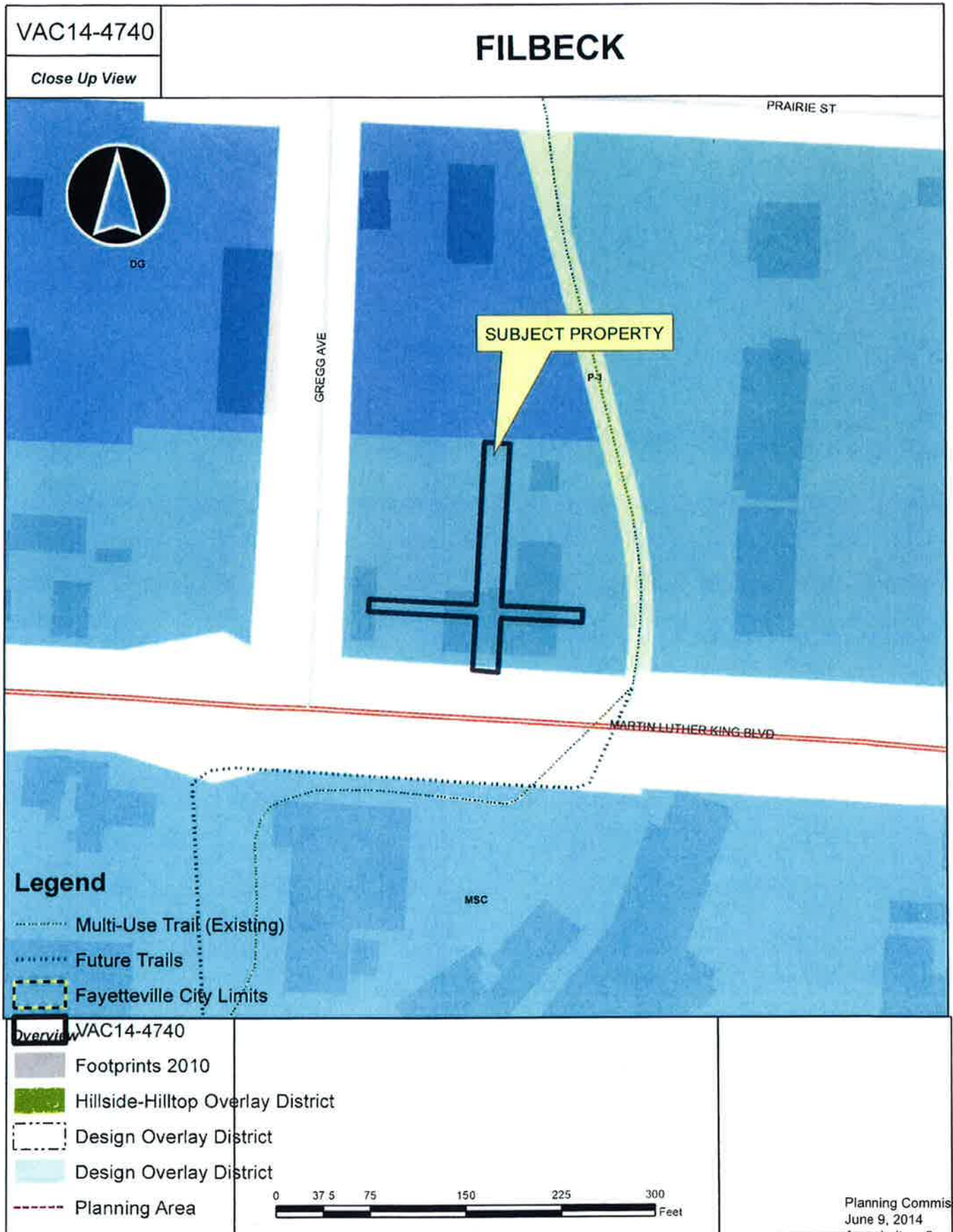
7. The easement is shown in red on the plan.

8. The easement is shown in red on the plan.

9. The easement is shown in red on the plan.

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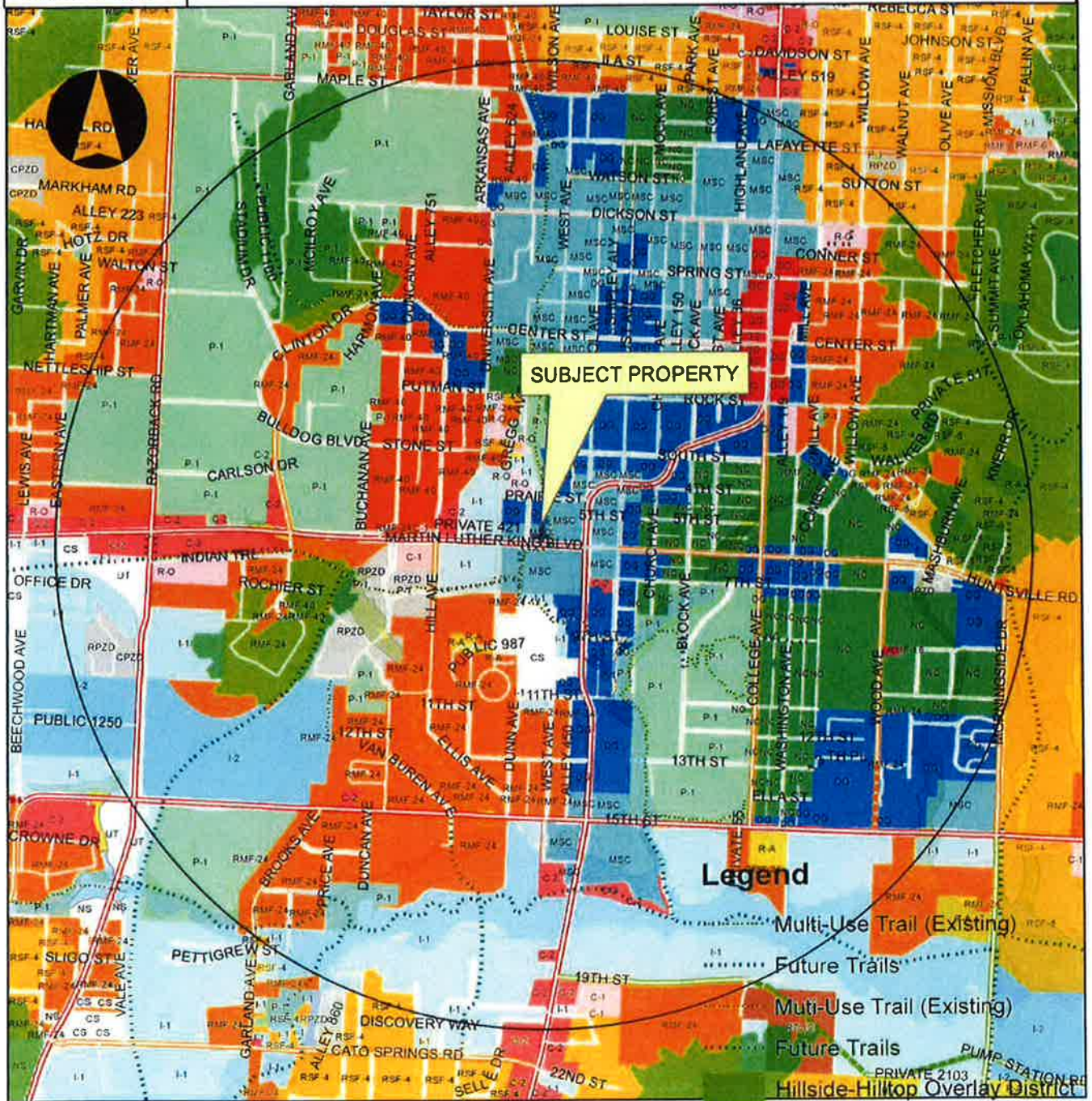




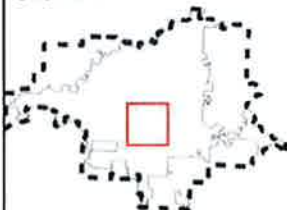
VAC14-4740

FILBECK

One Mile View



Overview



Legend

Subject Property

VAC14-4740

Boundary

0 0.25 0.5



1 Miles



VAC14-4740



Design Overlay District



Planning Area



Fayetteville

Alderman Adela Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman Rhonda Adams
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
July 01, 2014**

A meeting of the Fayetteville City Council will be held on July 01, 2014 at 5:30 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:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the June 17, 2014 City Council meeting minutes.
2. **City Council Workers Compensation Insurance Support:** A resolution to express the City Council's support of a legislative enactment to provide for workers compensation insurance coverage for emergency responders for work-related mental injury or illness.

3. **Bid #14-29 Forsgren, Inc.:** A resolution to award Bid #14-29 and authorize a contract with Forsgren, Inc. in the amount of \$1,242,968.30 for improvements to the Greenland Gravity Sewer Main, to approve a cost share agreement with the City of Greenland in the amount of \$374,806.67, to approve a project contingency of \$125,000.00, and to approve a budget adjustment.

B. Unfinished Business:

1. **Amended Articles of Incorporation for the Walton Arts Center Council and Foundation:** An ordinance to approve the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

Left on the First Reading

At the June 17, 2014 City Council meeting an amendment to the Amended Articles of Incorporation for the Walton Arts Center Council and Foundation ordinance was not voted on and tabled to the July 1, 2014 City Council meeting.

2. **Walton Arts Center Council, Inc. Lease:** A resolution to approve an Amended and Restated Lease Agreement among the University of Arkansas and City of Fayetteville as landlords and the Walton Arts Center Council, Inc. as tenant. ***This resolution was tabled at the June 17, 2014 City Council meeting to the July 1, 2014 City Council meeting.***

C. New Business:

1. **RZN 14-4687 (659 N. Genevieve Ave./Davis):** An ordinance rezoning that property described in rezoning petition RZN 14-4687, for approximately 1.62 acres, located at 659 N. Genevieve Avenue from R-A, Residential-Agricultural to RSF-2, Residential Single Family, 2 units per acre.
2. **RZN 14-4725 (1974 N. Gregg Ave./Gibson):** An ordinance rezoning that property described in rezoning petition RZN 14-4725, for approximately 0.65 acres, located at 1974 N. Gregg Avenue from RSF-4, Residential Single Family, 4 units per acre, to RMF-24, Residential Multi-Family, 24 units per acre.
3. **VAC 14-4740 (514 W. MLK BLVD/Filbeck):** An ordinance approving VAC 14-4740 submitted by Blew and Associates for property located at 514 W. MLK Blvd to vacate an existing utility easement.

D. City Council Agenda Session Presentations:

E. City Council Tour:

F. Announcements:

Adjournment:

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Agenda additions. A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.

Consent Agenda. Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item that item shall be removed and considered immediately after the Consent Agenda has been voted upon.

Old business and new business.

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Pre Agenda Meeting 6/17/14

Alderman Adela Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2



Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra E. Smith

Alderman Justin Tennant
Ward 3 Position 1

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A. Consent:

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2. **City Council Workers Compensation Insurance Support:** A resolution to express the City Council's support of a legislative enactment to provide for workers compensation insurance coverage for emergency responders for work-related mental injury or illness.

- ~~100-434~~ *Remove from agenda*
3. **Fayetteville Fire Department Training Grounds:** A resolution to designate approximately 14.2 acres of city property as training grounds for the Fayetteville Fire Department. *check w/ Paul*

B. Unfinished Business:

C. New Business:

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Handed out at the City Council
Meeting 7-01-14

Exhibit B



The Walton Arts Center Fayetteville Expansion and Renovation will allow the facility to meet growing demand for arts and special events and will improve the patron experience when they visit the theater. The project focuses on the expansion and renovation of the main lobby, Starr Theater, backstage support spaces, and technical upgrades.

1. The Main Lobby will be expanded and reconfigured, and a new plaza will create synergy with Dickson Street. The lobby will have more room for concessions, coat check, etc. and will serve as a great special event space. New multi-purpose rooms and support spaces (such as catering space, storage and concession areas) will be added.
2. Starr Theater will be upgraded and will have a dedicated lobby and entry. Additional backstage support spaces will be built to accommodate additional performance activities and events.
3. Backstage areas will be expanded to accommodate simultaneous performances in Baum Walker Hall and in Starr Theater and for growing touring production needs.
4. Theatrical lighting systems and audio systems will be upgraded to meet modern production needs. Accessible seating in Baum Walker Hall (main floor and balcony) will be added and upgraded to meet ADA standards.