

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, AR 72701

(479) 575-8323



City Council Final Agenda

Tuesday, June 18, 2024

5:30 PM

City Hall Room 219

City Council Members

Council Member Robert B. Stafford Ward 1

Council Member D'Andre Jones Ward 1

Council Member Sarah Moore Ward 2

Council Member Mike Wiederkehr Ward 2

Council Member Scott Berna Ward 3

Council Member Sarah Bunch Ward 3

Council Member Teresa Turk Ward 4

Council Member Holly Hertzberg Ward 4

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Treasurer Kara Paxton

MEETING INFORMATION:

1. **WEBINAR ID: 825 2432 8149**
PUBLIC REGISTRATION LINK: [HTTPS://US06WEB.ZOOM.US/WEBINAR/REGISTER/WN_KQ5NAZ_ESRIWGLOH4H3T4G](https://us06web.zoom.us/join/82524328149)

AGENDA ITEM COMMENT - AGENDAITEMCOMMENT@FAYETTEVILLE-AR.GOV

CALL TO ORDER**ROLL CALL****PLEDGE OF ALLEGIANCE****MAYOR' S ANNOUNCEMENTS, PROCLAMATIONS AND RECOGNITIONS****CITY COUNCIL MEETING PRESENTATIONS, REPORTS AND DISCUSSION ITEMS**

1. **NOMINATING COMMITTEE REPORT - COMMITTEE CHAIR**

PROPOSED AGENDA ADDITIONS**A. CONSENT**

- A.1. APPROVAL OF THE JUNE 4, 2024 CITY COUNCIL MEETING MINUTES**

- A.2. EPIC GLASS RECYCLING (SERVICE AGREEMENT):**

A RESOLUTION TO APPROVE AN AGREEMENT WITH EPIC GLASS RECYCLING FOR THE HAULING AND DISPOSAL OF SOLID WASTE AND RECYCLABLES IN THE CITY OF FAYETTEVILLE (2024-111)

- A.3. WASTE MANAGEMENT OF ARKANSAS (CONTRACT AMENDMENT):**

A RESOLUTION TO APPROVE AN AMENDMENT TO THE CONTRACT WITH WASTE MANAGEMENT IN THE AMOUNT OF \$25,000.00 FOR THE COST INCREASE OF SOLID WASTE TRANSFER AND DISPOSAL CONTRACT SERVICES (2024-187)

- A.4. TSW, INC. (CONTRACT AMENDMENT #1):**

A RESOLUTION TO APPROVE AMENDMENT NO. 1 TO THE CONTRACT WITH TSW, INC. IN AN AMOUNT NOT TO EXCEED \$101,500.00 FOR ADDITIONAL DESIGN AND CONSTRUCTION DOCUMENTS FOR WALKER COMMUNITY PARK, AND TO APPROVE A BUDGET ADJUSTMENT (2024-

164)

A.5. APAC-CENTRAL, INC. (CHANGE ORDER #1):

A RESOLUTION TO APPROVE CHANGE ORDER NO. 1 TO THE CONTRACT WITH APAC-CENTRAL, INC. IN THE AMOUNT OF \$371,992.50 FOR THE CONSTRUCTION OF THE 15TH AND RAZORBACK ROAD INTERSECTION IMPROVEMENTS PROJECT, AND TO APPROVE A BUDGET ADJUSTMENT (2024-171)

A.6. NASPO VALUEPOINT (PURCHASING CONTRACT):

A RESOLUTION TO APPROVE THE PURCHASE OF TIRES, TUBES, AND SERVICES FROM APPROVED MANUFACTURERS ON AN AS NEEDED BASIS PURSUANT TO A NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS VALUEPOINT COOPERATIVE PURCHASING AGREEMENT, THROUGH JUNE 30, 2027 AND ANY FUTURE RENEWAL PERIODS (2024-186)

A.7. ILLINOIS RIVER WATERSHED PARTNERSHIP (LANDOWNER AGREEMENT):

A RESOLUTION TO APPROVE A LANDOWNER AGREEMENT WITH THE ILLINOIS RIVER WATERSHED PARTNERSHIP FOR NATURAL STREAM RESTORATION OF AN UNNAMED TRIBUTARY OF FLYNN CREEK WITHIN ROCKY BRANCH PARK (2024-146)

B. UNFINISHED BUSINESS

B.1. REZONING-2024-0018: (SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE./SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO, 522):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-18 FOR APPROXIMATELY 2.9 ACRES LOCATED SOUTHWEST OF WEST TREADWELL STREET AND SOUTH HILL AVENUE IN WARD 2 FROM RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE TO MSC, MAIN STREET CENTER, SUBJECT TO A BILL OF ASSURANCE (2024-57)

AT THE MAY 21, 2024 CITY COUNCIL MEETING THIS ITEM WAS LEFT ON THE FIRST READING.

AT THE JUNE 4, 2024 CITY COUNCIL MEETING THIS ITEM WAS LEFT ON THE FIRST READING AND TABLED TO THE JUNE 18, 2024 CITY COUNCIL MEETING.

B.2. REZONING-2024-0011: (SPRINGWOODS PZD IN WARD 2):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 23.14 ACRES IN THE SPRINGWOODS PZD IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES (2024-149)

AT THE JUNE 4, 2024 CITY COUNCIL MEETING THIS ITEM WAS LEFT ON THE SECOND READING.

B.3. REZONING-2024-0011: (PARK WEST PZD IN WARD 2):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 39.41 ACRES IN THE PARK WEST PZD ON NORTH HIGHWAY 112 IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES (2024-147)

AT THE JUNE 4, 2024 CITY COUNCIL MEETING THIS ITEM WAS LEFT ON THE FIRST READING.

C. NEW BUSINESS

C.1. ARPA CHILDCARE ASSISTANCE PROGRAM (ADDITIONAL FUNDING):

A RESOLUTION TO COMMIT THE REMAINING ARPA FUNDS TO THE CHILDCARE ASSISTANCE PROGRAM AND TO APPROVE A BUDGET ADJUSTMENT (2024-109)

C.2. VACATION-2024-0010: (3334 N. MANA CT./HALF MOON ORAL SURGERY, 212):

AN ORDINANCE TO APPROVE VAC-24-10 FOR PROPERTY LOCATED AT 3334 NORTH MANA COURT IN WARD 3 TO VACATE A 0.03 ACRE PORTION OF GENERAL UTILITY EASEMENT (2024-156)

C.3. REZONING-2024-0021: (3390 W. MARTIN LUTHER KING JR BLVD/CATHCART RENTALS LLC, 557):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-21 FOR APPROXIMATELY 1.54 ACRES LOCATED AT 3390 WEST MARTIN LUTHER KING JR. BOULEVARD IN WARD 1 FROM R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, AND RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE TO UT, URBAN THOROUGHFARE (2024-162)

C.4. REZONING-2024-0022: (951 N. DOUBLE SPRINGS RD/R&D PROPERTY HOLDINGS LLC, 435):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-22 FOR APPROXIMATELY 0.56 ACRES LOCATED AT 951 NORTH DOUBLE SPRINGS ROAD IN WARD 4 FROM R-A, RESIDENTIAL

AGRICULTURAL TO NS-G, NEIGHBORHOOD SERVICES-GENERAL (2024-163)

C.5. REZONING-2024-0023: (1000 S. FUTRALL DR./ADROIS HOSPITALITY LLC, 559):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-23 FOR APPROXIMATELY 1.75 ACRES LOCATED AT 1000 SOUTH FUTRALL DRIVE IN WARD 1 FROM C-2, THOROUGHFARE COMMERCIAL TO CS, COMMUNITY SERVICES (2024-161)

C.6. APPEAL: CONDITIONAL USE PERMIT-2024-0017: (10 S. PALMER AVE/BEYKIRCH, 521):

A RESOLUTION TO GRANT THE APPEAL OF COUNCIL MEMBERS SARAH BUNCH, SARAH MOORE, AND MIKE WIEDERKEHR AND DENY CONDITIONAL USE PERMIT CUP 2024-017 FOR A GROUP HOME FACILITY FOR GRADUATE STUDENTS AND ADDITIONAL SUPPORTIVE SERVICES THROUGH THE INTERNATIONAL STUDENT CHRISTIAN ASSOCIATION (2024-166)

D. CITY COUNCIL AGENDA SESSION PRESENTATIONS

D.1. SALES TAX REPORT - CHIEF FINANCIAL OFFICER AND ENERGY REPORT - ENVIRONMENTAL DIRECTOR

E. CITY COUNCIL TOUR

F. ANNOUNCEMENTS

G. ADJOURNMENT

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may appear and address the City Council on Unfinished Business, New Business, and Public Hearings at City Council meetings. If you wish to address the City Council on an agenda item, please wait for the Mayor or Chair to request public comment. When the Mayor or Chair recognizes you, please start your public comment by giving your name and address. Comments are to be addressed to the Mayor or Chair. The Mayor or Chair will direct your comments to the appropriate elected officials, staff, or others for response. Keep your comments respectful, brief, to the point, and relevant to the agenda item being considered. Each speaker from the public will be allowed one turn to speak for discussion of an agenda item.

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 a Council Member 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.

Unfinished Business and New Business:

Overview Period: Agenda items at a City Council meeting 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 a Council Member later to answer questions. City staff, Council Members and applicants may use electronic visual aids in the City Council meeting as part of the presentation of the agenda item. City staff's presentation and an Applicant's presentation whether presented by one or more than one presenter shall each be limited to a maximum of ten (10) minutes unless the City Council by unanimous consent or majority vote allows additional time.

Public Comments: Public comment at a City Council meeting shall be allowed for all members of the audience. Speakers shall be limited to a maximum of three (3) minutes to discuss the agenda item being considered by the City Council. Amendments may receive public comments only if approved by the City Council by unanimous consent or majority vote. If public comment is allowed for an amendment, speakers will only be allowed to speak for three (3) minutes. The City Council may allow both a speaker additional time and an unsigned-up person to speak by unanimous consent or majority vote. As part of a person's public comments allowed above, the speaker may use electronic visual aids during their three (3) minutes presentation period concerning the agenda item being considered by the City Council.

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 comments that are harassing or amount to a personal attack against any identifiable individual including abusive comments and derogatory remarks about integrity or offer any other comments that are also not limited to the discussion of the specific agenda item being considered by the City Council. 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 Telecommunications Devise for the Deaf (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 on our website at www.fayetteville-ar.gov or in the Office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas (479) 575-8323.

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

Robert B. Stafford
Council Member
Ward 1 Position 1

Chair
Mike Wiederkehr
Council Member
Ward 2 Position 2



Sarah Bunch
Council Member
Ward 3 Position 2

Teresa Turk
Council Member
Ward 4 Position 1

Nominating Committee Report June 18, 2024

**Council Members Present – Chair Mike Wiederkehr, Robert Stafford,
Sarah Bunch (only present Wednesday, June 12, 2024), and Teresa Turk.**

The Nominating Committee recommends the following candidates for appointment:

ANIMAL SERVICES ADVISORY BOARD

Emily Sledge – One Resident at Large Term Ending 06/30/2027.

Kathleen Lehman – One Resident at Large Term Ending 06/30/2027.

BLACK HERITAGE PRESERVATION COMMISSION

Janet Allured – One Unexpired Member at Large Term Ending 12/31/2026.

BOARD OF ADJUSTMENTS

Caroline Fox – One Unexpired Public at Large Term Ending 03/31/2027.

ENVIRONMENTAL ACTION COMMITTEE

Stacey Buff – One Resident at Large Term Ending 06/30/2027.

FAYETTEVILLE ARTS COUNCIL

Jessica DeBari – One Community Resident Term Ending 06/30/2027.

Emily Miller – One Working Artist Term Ending 06/30/2027.

HISTORIC DISTRICT COMMISSION

Cheri Coley – One Member at Large Term Ending 06/30/2027.

Jennifer Didway – One Member at Large Term Ending 06/30/2027.

Mark Harper – One Member at Large Term Ending 06/30/2027.

William Hopkins – One Member at Large Term Ending 06/30/2027.

URBAN FORESTRY ADVISORY BOARD

Joseph Fox – One Unexpired Citizen at Large Term Ending 12/31/2024.

WALTON ARTS CENTER COUNCIL

Barry Bryan – One Citizen at Large Term Ending 06/30/2027.



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU: Peter Nierengarten, Environmental Director
FROM: Daryl Brigman, Financial Analyst - RTC
SUBJECT: **A resolution to approve an agreement between the City of Fayetteville, Arkansas and Epic Glass Recycling to haul and dispose of solid waste in the City of Fayetteville**

RECOMMENDATION:

Staff recommends City Council approval of a resolution with Epic Glass Recycling for the hauling and disposal of solid waste in the City of Fayetteville.

BACKGROUND:

City Code 50. 29 - Private Collectors; Contract with City Required No person, except a duly authorized agent or employee of the city, shall empty garbage or trash receptacles, or convey or transport garbage or trash on the streets or public thoroughfares of the city, without a written contract with the city. (Code 1965, § 10- 46; Ord. No. 1194, 4- 6- 59; Code 1991, § 50. 29)

In accordance with this City Code, Epic Glass Recycling has submitted a request for contract to haul solid waste within the city limits of Fayetteville.

There are currently 18 approved franchise haulers operating in the city of Fayetteville. Attached is a list of these haulers and the materials they are approved to haul.

DISCUSSION:

The hauling contract will permit Epic Glass Recycling to collect and haul recyclable glass in a vehicle with a hydraulic tipper that will secure the cart to dump it into the hopper. Hauler shall not collect any Recyclable Glass in other containers. All hauled waste and/or recyclables shall be suitably enclosed or covered as to prevent roadside littering.

The agreement requires Epic Glass Recycling to pay a monthly fee to the City of Fayetteville of 5% of gross revenues for recyclables collected. The term of the agreement will be 2 years with automatic renewals for 2 additional 2- year terms. Staff proposes approval for Epic Glass Recycling to haul and dispose of solid waste within the City of Fayetteville per the terms of the attached agreement.

BUDGET/STAFF IMPACT:

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

None

ATTACHMENTS: SRF (#3), Epic Glass Recycling Agreement (#4)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-111

A resolution to approve an agreement between the City of Fayetteville, Arkansas and Epic Glass Recycling to haul and dispose of solid waste in the City of Fayetteville

A RESOLUTION TO APPROVE AN AGREEMENT WITH EPIC GLASS RECYCLING FOR THE HAULING AND DISPOSAL OF SOLID WASTE AND RECYCLABLES IN THE CITY OF FAYETTEVILLE

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 Mayor Jordan to sign an agreement with Epic Glass Recycling, a copy of which is attached to this Resolution, for the hauling and disposal of solid waste and recyclable materials in the City of Fayetteville.

City of Fayetteville Staff Review Form

2024-111

Item ID

6/18/2024

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

Daryl Brigman

5/13/2024

RECYCLING/TRASH COLLECTION (750)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to approve an agreement between the City of Fayetteville, Arkansas and Epic Glass Recycling to haul and dispose of solid waste in the City of Fayetteville

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

City of Fayetteville Staff Review Form

2024-111

Item ID

6/18/2024

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

Daryl Brigman

5/13/2024

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Available Budget

\$ -

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Item Cost

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Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF JUNE 18, 2024

TO: Mayor and City Council

THRU: Peter Nierengarten, Environmental Director

FROM: Daryl Brigman, Financial Analyst – Recycling and Trash Collections

DATE: May 13, 2024

SUBJECT: A resolution to approve an agreement between the City of Fayetteville, Arkansas and Epic Glass Recycling to haul and dispose of solid waste in the City of Fayetteville

RECOMMENDATION:

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BUDGET/STAFF IMPACT:
None

Attachments:
Franchise Haulers
Epic Glass Recycling to Haul and Dispose of Solid
Waste in the City of Fayetteville

City of Fayetteville Franchise Haulers

Business	DBA	City	Contact	Address	Status	Expires	Activity	No
Central Arkansas Recycling & Disposal	CARDS	Little Rock, AR	Jason Fitzgerald	4208 Johnson Rd Springdale, AR 72762	Approved 7/17/18	7/17/2024	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	1
Marck Recycling		Rogers, AR	Kent Longley	715 Main Street Cassville, MO 65625	Approved 10/2/18	10/2/2024	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	3
Windstar Investments LLC	Thunder Struck	Rogers, AR	Gene Housley	PO Box 68 Lowell, AR 72745	Approved 10/2/18	10/2/2024	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	4
Eco Vista Waste Management	Waste Management	Tontitown, AR	George Wheatley	1041 Arbor Acres Ave. Springdale, AR 72762	Approved 9/17/19	9/17/2025	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	5
Hogeve Mfg. Co. Inc	Hogbox	Fayetteville Ar.	Lori Devecery	2900 South City Lake Road Fayetteville, AR 72701	Approved 9/17/19	9/17/2025	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	6
Allied Waste Services	Republic	Bella Vista, AR	Jennifer Fagan or Krystal Rhuems (Asst. Controller)	36 Bella Vista Way Bella Vista, AR 72714	Approved 12/3/19	12/3/2025	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	7
Ozark Dumpster Service, LLC		Springdale, AR	Brandon Hollenbeck	PO Box 895 Springdale, AR 72765	Approved 12/3/19	12/3/2025	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	8
Ozark Compost & Swap, LLC		Fayetteville, AR	Ricky Ludeman	5213 S. 60th Place Rogers, AR 72758	Approved 9/7/21	9/7/2027	Organic waste and recyclables hauling and composting within the city limits of Fayetteville.	2
Rubbish Removal and Roll-Off Rentals, LLC	Arkansas Waste Solutions	Winslow, AR	Brent Wells	10040 Devils Den Rd Winslow, AR 72959	Approved 9/7/21	9/7/2027	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	9
On Point Dumpster Rental NWA, LLC		Rogers, AR	Ryan Truesdale/Jeff Woodcock	8004 West Elsworth Street Rogers, AR 72758	Approved 7/19/22	7/19/2028	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	10
SPO Networks, Inc	SPO Recycling	Lowell, AR	Tom Smith/Moira MacLeod	715 Main Street Cassville, MO 65625	Approved 7/19/22	7/19/2028	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	11
EZest Solutionz LLC	Dumpster Dudez of Northwest Arkansas	Fayetteville, AR	Phil Ezell	9338 W Forest Hills Dr. Fayetteville, AR 72704	Approved 9/20/22	9/20/2028	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	12
Food Recycling Solutions, LLC		Rogers Ar.	Richard Ims	13935 Pyramid Drive Rogers, AR 72758	Approved 10/4/19	10/4/2028	Organic waste and recyclables hauling and composting within the city limits of Fayetteville.	13
Hamilton Alliance, Inc		Cicero, IN	Ana Farrah	PO Box 797 Cicero IN 46034	Approved 11/07/23	11/7/2029	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	14
Lakeshore Recycling Services	Inland Waste Solutions & Orion Waste Solutions	Bethel Heights, AR	Robert Heath	848 Highway 264 E Bethel Heights, AR 72764	Approved 11/07/23	11/7/2029	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	15
Outbound Waste LLC		Bentonville, AR	Kade Fields	1302 NE 10th St Bentonville, AR 72712	Approved 11/07/23	11/7/2029	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	16
Junk-IT LLC		Little Rock, AR	John Bunton	PO Box 17373 Little Rock, AR 72222	Approved 02/06/24	2/6/2030	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	17
Diamond Waste		Bentonville, AR	Brandon Ruff	705 S.W. Green World St. Bentonville, AR 72712	Approved 02/06/24	2/6/2030	Hauling and disposal of solid waste and recyclable material within the city limits of Fayetteville.	18

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY OF FAYETTEVILLE

This Agreement (the “Agreement”), is entered into on this 13th day of May, 2024, between the **City of Fayetteville, Arkansas**, a municipal corporation (the “City”), and Epic Glass Recycling (the “Hauler”), and shall be in full force and effect on the date first written above, City and Hauler agree as follows:

1. The term of this Agreement shall be for two (2) years, with automatic renewals for two (2) additional two (2) year terms, unless otherwise terminated pursuant to the terms hereof. Notice of non-renewal by either City or Hauler shall be given at least thirty days prior to the end of the current term.
2. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City, excluding residential areas, entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than one (1) year and any subsequent extensions shall be for terms of no more than one (1) year. No customer service Agreement shall extend the terms of this Agreement.
3. Hauler agrees and understands that it may only collect and haul Class 1 and Class 4 Solid Waste and/or Recyclables using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (12) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (12) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables, with the exception of construction/demolition waste, shall be hauled from any customer within the corporate limits of the City of Fayetteville. All hauled waste and/or recyclables shall be suitably enclosed or covered as to prevent roadside littering.
4. In consideration of the right to provide the hauling of solid waste and/or recyclables described in Item #3 above, Hauler agrees and understands that it shall be required to pay a monthly fee of: ten (10%) percent (the “Solid Waste Fee”) of the gross revenue received for providing solid waste hauling services and five (5%) percent (the “Recycling Fee”) of the gross revenue received for providing the hauling of recyclables or construction/demolition waste to a permitted construction and demolition waste sorting facility. Any construction/demolition waste that is not hauled to and accepted by a permitted construction and demolition waste sorting facility or any recyclables not accepted by a recycling facility or recycling broker shall be subject to the 10% Solid Waste Fee.
5. Hauler agrees and understands that it shall deliver all Class 1 waste to a properly licensed landfill facility and all Class 4 waste to a properly licensed landfill facility or a properly licensed construction and demolition waste sorting facility. Hauler shall pay all tip fees to the construction and demolition waste sorting facility operator, transfer station fees to the transfer station operator and all landfill fees to the landfill operator, as they may be established and amended, from time to time.
6. Hauler shall pay all fees due hereunder, along with submitting “Attachment A: Solid Waste Documentation”, or page 1 of Attachment A in conjunction with an agreed upon vendor generated report, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler

fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (including those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors."

7. Hauler shall pay all fees due hereunder, along with submitting "Attachment B: Recycling Documentation", on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 10% penalty per month. If Hauler fails to pay the fees within forty-five (45) days of the due date, the City may terminate this Agreement upon delivery of one (1) written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) volumes of recycling collected, in tons, by commodity, with disposition by destination market, for all recycling; (ii) volumes of construction and demolition waste delivered to permitted construction and demolition waste sorting facility and percentage of material recovered. With payment remittance, the City will review and obtain certain trade secret information, including rates, frequency of service, customer lists, other customer information, and contracts with recyclers and processing mills ("Confidential Information"). The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors."
8. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the Hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review and obtain certain trade secret information, including rates, frequency of service, customer lists, and other customer information ("Confidential Information"). This information shall not be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler, or as otherwise required by law. The City asserts this information is exempt from disclosure under the Arkansas Freedom of Information Act as the information meets the exemption for records that "if disclosed would give advantage to competitors." This information will only be reviewed by City financial staff, and will not be made available to City solid waste staff.
9. The City will advise Hauler of any request for information which the City, at the City's sole discretion, determines to be non-disclosable or otherwise subject to an exemption from disclosure under the Arkansas Freedom of Information Act. If a court of competent jurisdiction determines that said requested information is disclosable or otherwise is not exempt from

disclosure under the Arkansas Freedom of Information Act, the City will comply with said finding and notify Hauler. Discovery requests made to the City during the course of any litigation, or any other subpoena or court order issued to the City for information or records related to Hauler and this Agreement, shall be promptly made known to Hauler.

10. Hauler agrees and understands that it shall submit to the City by June 30th on an annual basis: (i) a list of all commercial vehicles used to provide services in the City; (ii) proof of appropriate vehicle registration; (iii) and proof of the insurance required in the Agreement.
11. Hauler agrees and understands that it shall provide by June 30th on an annual basis: (i) a list of vehicle operators collecting and hauling waste in the City of Fayetteville; (ii) proof of their valid and appropriate commercial drivers' licenses; (iii) and the provision, maintenance, and implementation of a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
12. Hauler agrees that it shall provide by June 30th on an annual basis copies of valid and current hauling and disposal permits from the Arkansas Department of Environmental Quality, the Solid Waste District with jurisdiction, and any local permitting agency.
13. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
14. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
15. If Hauler utilizes the City's transfer station, Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
16. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable City ordinances. This is a contractual Agreement and is not intended to be part of or relate in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
17. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third part or affiliate.
18. For the purpose of this contract, the Point of Contact for the City of Fayetteville shall be the City's Environmental Director. The Point of Contact for the Hauler shall be Bob Crawford. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.

19. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
20. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
- a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - c) City will be added as an additional insured on General Liability and Auto Liability policies.
 - d) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate
Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

21. Termination:
- a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirement or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement no sooner than thirty (30) days after the date of written notice of such breach or default; (ii) cure the breach or default at the expense of the Hauler; and/or (iii) exercise any right or remedy to which it may be entitled by law.

- b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted and such proceeding is not dismissed within sixty (60) days.
 - c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.
22. All notices required or permitted under this contract shall be submitted in writing to the other party of this contract by electronic mail, return receipt requested, and by U.S. Mail, which notice shall be effective three (3) days after deposit therein addressed to the following:
- | | |
|--|--|
| <p>City of Fayetteville
Environmental Director
113 West Mountain Street
Fayetteville, AR 72701</p> | <p>Epic Glass Recycling, Inc.
Attn: Courtney Little
3101 Dugan Drive
Little Rock, AR 72206</p> |
|--|--|
23. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such non-exempt documents, such non-exempt documents shall be provided in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.). Only legally authorized photocopying costs may be assessed for this compliance.
24. This Agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
25. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
26. Each paragraph of the Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs shall remain in full force and effect.
27. This contract constitutes the entire understanding of the parties and no Notification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and the Hauler.
28. Each of the undersigned warrants that he or she has the full right, power, and authority to execute this contract on behalf of the party indicated for the purposes herein contained.
29. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in

applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.

30. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

EPIC GLASS RECYCLING, INC.

By: _____
LIONELD JORDAN, Mayor

By:  _____
COURTNEY LITTLE, Chairman of the Board

ATTEST:

WITNESS:

By: _____
KARA PAXTON, City Clerk/Treasurer

By:  _____
BOB CRAWFORD, Executive Director



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Peter Nierengarten, Environmental Director
SUBJECT: **Amendment to Solid Waste Transfer and Disposal Contract Services**

RECOMMENDATION:

Staff recommends approval of a contract amendment with Waste Management to cover the cost increase of solid waste transfer and disposal contract services.

BACKGROUND:

In November 2009, the Fayetteville City Council passed Resolution 224-09 approving a contract with Waste Management of Arkansas for the hauling and disposal of municipal waste from the City's transfer station. The term of the original contract was for 5-years and included a provision for the option to renew for 2 successive 5-year terms upon mutual written agreement. The first renewal was executed on November 2, 2014 by Resolution 194-14 and the second renewal was executed on October 15, 2019 by Resolution 229-19. The contract current renewal runs through December 31, 2024.

DISCUSSION:

On August 24, 2023, the Boston Mountain Solid Waste District Board unanimously approved Resolution 2023-01 that created a landfill diversion fund by raising the waste assessment fee on all material going into the EcoVista Landfill in Tontitown by fee by 50 cents per ton. The purpose of this fund is to support programs that divert waste from the landfill. Waste Management has requested an amendment to the current hauling and disposal contract to cover the fee increase. The new rate will be \$48.88 per ton for hauling and disposal of solid waste.

BUDGET/STAFF IMPACT:

The estimated cost impact of the increased waste disposal fee for the remainder of 2024 is \$25,000. Sufficient funds are available in the Recycling & Trash Collections operational budget to cover this increase.

ATTACHMENTS: SRF (#3), Resolution 2023-01 (#4), Letter From Waste Management (#5)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-187

Amendment to Solid Waste Transfer and Disposal Contract Services

A RESOLUTION TO APPROVE AN AMENDMENT TO THE CONTRACT WITH WASTE MANAGEMENT IN THE AMOUNT OF \$25,000.00 FOR THE COST INCREASE OF SOLID WASTE TRANSFER AND DISPOSAL CONTRACT SERVICES

WHEREAS, in November 2009, the City Council passed Resolution 224-09 approving a contract with Waste Management of Arkansas for the hauling and disposal of municipal waste from the City's transfer station; and

WHEREAS, the term of the original contract was for 5 years and included a provision for the option to renew for 2 successive 5-year terms upon mutual written agreement; and

WHEREAS, the first renewal was executed on November 2, 2014 by Resolution 194-14 and the second renewal was executed on October 15, 2019 by Resolution 229-19; and

WHEREAS, on August 24, 2023, the Boston Mountain Solid Waste District Board unanimously approved Resolution 2023-01 that created a landfill diversion fund by raising the waste assessment fee on all material going into the EcoVista Landfill in Tontitown by 50 cents per ton; and

WHEREAS, Waste Management has requested an amendment to the current hauling and disposal contract to cover the fee increase.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign an amendment to the contract with Waste Management in the amount of \$25,000.00 for the cost increase of solid waste transfer and disposal contract services.

City of Fayetteville Staff Review Form

2024-187

Item ID

6/18/2024

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

Peter Nierengarten

5/31/2024

RECYCLING/TRASH COLLECTION (750)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a contract amendment with Waste Management to cover the cost increase of solid waste transfer and disposal contract services.

Budget Impact:

5500.750.5040-5316.00

Recycling & Trash Collections

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 708,212.00

Expenses (Actual+Encum)

\$ 117,219.01

Available Budget

\$ 590,992.99

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 590,992.99

V20221130

Purchase Order Number:

Previous Ordinance or Resolution # 229-19

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

Boston Mountain Solid Waste Management District
RESOLUTION 2023-01

A RESOLUTION TO ADJUST THE FEE ASSESSED ON
APPLICABLE WASTE IN THE BOSTON MOUNTAIN REGIONAL
SOLID WASTE MANAGEMENT DISTRICT RULES & REGULATIONS

WHEREAS, the Board desires to create a fund for the purpose of funding landfill diversion strategies and programs; and

WHEREAS, the Waste Assessment fee applied to all applicable waste shall increase to \$2.00 per ton, \$0.30 per uncompacted cubic yard, and \$0.70 per compacted cubic yard; and

WHEREAS, a fund shall be created to receive the additional revenue listed in § 20.02 and named the Diversion Fund.

NOW, THEREFORE, THE DISTRICT BOARD DOES HEREBY RESOLVE AS FOLLOWS:

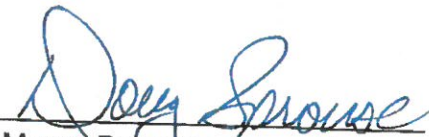
Section 1.

Approve the changes to the Rules and Regulations of the Boston Mountain Solid Waste District

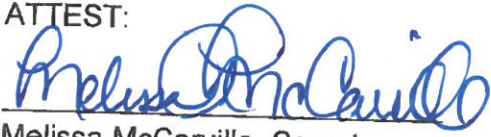
Section 2.

The notice shall be published two times but the comment period shall not be less than thirty (30) days from the date of publication.

Approved this 24 of August 2023.


Mayor Doug Sprouse, Chair

ATTEST:


Melissa McCarville, Secretary

CHAPTER F:	SOLID WASTE ASSESSMENT.
Subchapter 20	Assessment.
Subchapter 21	Procedure.
Subchapter 22	Compliance and Enforcement.

Subchapter 20 Assessment.

§20.01 Authority

§20.02 Applicable Waste

§20.03 Fee Amount

§20.01 Authority

This Chapter F, Solid Waste Assessment Regulation, is adopted and imposed pursuant to A.C.A. 8-6-714, as amended by Act 209 of 2011.

20.01 Applicable Waste

- (a) Starting May 1, 2011, there shall be assessed a fee, to be paid to the District, on all solid waste generated within the District; or generated outside the District and brought to a processing or disposal facility within the District.
- (b) This fee will be applicable to all solid waste that is collected and delivered to a processing, transfer or disposal facility within the District; or generated outside the District and brought into a processing, transfer, recycle or disposal facility within the District. This also includes all solid waste waste generated in the District and taken outside the District and delivered to a processing, transfer or disposal facility.
- (c) This fee will not be applied to permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of solid wastes generated by the industry; to any non-municipal solid waste generated by private industry and shipped to another state for recycling, treatment or disposal; to any recyclable materials which are processed and marketed for recycling; to any organic materials which are delivered to a Class Y or O composting facility; to any materials which are removed from solid waste and processed for recycling; to waste tires processed through the District's waste tire program; or to household hazardous wastes collected through the District's HHW program that is handled as Subtitle C waste.

§20.02 Fee Amount

(a) The amount of the fee assessed shall be \$~~1,502.00~~ per ton.

(1) \$0.50 per ton of this fee shall be deposited into a fund designated for landfill diversion strategies and programs.

~~(a)1.~~ This fund is to only be used with approval by the Board* of Directors.

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(b) If weight tickets are not available, the fee shall be calculated on a volume basis as follows.

(1) ~~\$0.3025~~ per uncompacted cubic yard

(2) ~~\$0.7045~~ per compacted cubic yard

~~(2)1.~~ \$0.05 per uncompacted and \$0.25 per compacted* cubic yard shall also be deposited into the same fund as referenced by §20.02(a)(1).

Commented [RR2]: Calculations based on EPA volume-to-weight conversion factors.
https://www.epa.gov/sites/default/files/2016-04/documents/volume_to_weight_conversion_factors_memorandum_04192016_508fml.pdf

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(c) If solid wastes, subject to a fee under this Chapter, are shipped, delivered or transported to another Solid Waste District within this state that also imposes a fee pursuant to A.C.A. 8-6-714(a)(1)(A); then the fees imposed shall be divided between the districts pursuant to any inter local agreement in place between the Districts. If no inter local agreement is in place, the larger of the fees shall be imposed and said fees shall be split evenly between the Districts.

Subchapter 21 Procedures

§21.01	Landfills
§21.02	Solid Waste Material Recovery Facility
§21.03	Class S Composting Facility
§21.04	Transfer Stations
§21.05	Out-of-District Haulers
§21.06	Schedule

§21.01 Landfills

Any landfill located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.

§21.02 Solid Waste Material Recovery Facility

(a) Any Solid Waste Material Recovery Facility located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.

(b) Any waste handled by a solid waste material recovery facility that is delivered to a landfill within the District shall be exempt from the fees imposed by this Section.

§21.03 Class S Composting Facilities

(a) Any class S composting facility located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.

(b) Any waste handled by a class S composting facility that is delivered to a landfill within the District shall be exempt from the fees imposed by this Section.

§21.04 Transfer Stations

(a) Any transfer station located within the District shall pay to the District an amount equal to the per ton fee amount in Section 20.02 times the number of tons of solid waste handled. Such fee will be paid according to the schedule listed in Section 21.06.

(b) Any waste handled by a transfer station that is delivered to a landfill, solid waste material recovery facility or class S composting facility within the District shall be exempt from the fees imposed by this Section.

§21.05 Out-of-District Haulers

Any hauler who collects solid waste generated within the District but transports it out of district for processing or disposal shall be required to submit the applicable fee in Section 20.02 times the number of tons of waste transported, to the District according to the schedule in §21.06.

§21.06 Schedule

Fees shall be paid to the District quarterly. For all wastes handled during the months of January – March, payment will be due by April 30th. For all wastes handled during the months of April – June, payment will be due by July 30th. For all wastes handled during the months of July – September, payment will be due by October 30th. For all wastes handled during the months of October – December, payment will be due by January 30th.



March 11th, 2024

Fayetteville, City of
Attn : Peter Neirengarten, Enviromental Director
3411 Hwy 126 Suite 201
Fayetteville, AR

Dear Mr. Nierengarten:

As North America's leading provider of comprehensive waste services, Waste Management (WM) is committed to total customer satisfaction, operating excellence, and the safe and responsible disposal of waste materials. WM greatly appreciates the opportunity to continue providing waste services to the City of Fayetteville Transfer Station.

The purpose of this letter is to notify the City of Fayetteville of the increase in the Waste Assessment Fee established by Boston Mountain Solid Waste District (BMSWD). BMSWD recently advised WM of its decision to increase its Waste Assessment Fee by fifty cents (\$0.50), effective April 1, 2024. WM respectfully requests the City of Fayetteville approve the additional increased costs resulting from this uncontrollable circumstances that consists of an increased fee by this regional government authority (BMSWD). As a result, WM's disposal rate for the City will increase from \$35.56 per ton to \$36.06 per ton for Solid Waste disposal at the Eco Vista Landfill, which is located within the Boston Mountain Solid Waste District. WM is requesting the disposal rate increase for the City to be effective April 1, 2024. Please see the notice of the fee increase provided by the BMSWD provided below.

Thank you for the opportunity to service the City of Fayetteville for their Solid Waste disposal needs. If you have any questions or concerns, please free to contact Jamie Vernon at jvernon@wm.com.

Sincerely,

Jamie Vernon
Public Sector Manager
WM

Cc: Blake Small
Stephanie Peterson



"This email is to inform you that effective April 1, 2024, the Waste Assessment Fee will increase from \$1.50 per ton to \$2.00 per ton on all waste collected within the Boston Mountain Regional Solid Waste Management District (Madison and Washington counties).

§20.03 Fee Amount

(a) The amount of the fee assessed shall be \$2.00 per ton.

(1) \$0.50 per ton of this fee shall be deposited into a fund designated for landfill diversion strategies and programs.

1. This fund is to only be used with approval by the Board of Directors.

(b) If weight tickets are not available, the fee shall be calculated on a volume basis as follows.

(1) \$0.25 per uncompacted cubic yard

(2) \$0.45 per compacted cubic yard

(c) If solid wastes, subject to a fee under this Chapter, are shipped, delivered or transported to another Solid Waste District within this state that also imposes a fee pursuant to A.C.A. 8-6-714(a)(1)(A); then the fees imposed shall be divided between the districts pursuant to any inter local agreement in place between the Districts. If no inter local agreement is in place, the larger of the fees shall be imposed and said fees shall be split evenly between the Districts.

A full version of the District Rules is available online at bostonmountain.org/district-info

Also, the Quarterly Reporting Form has been updated. Begin using the new form for the 2nd Quarter 2024 report and fees to submit to the District, due July 15.

I have attached both forms to this email.

Thank you,"



Robyn Reed

Director, Boston Mountain Solid Waste District

479.846.4617 | reed@bmswd.com | bostonmountain.org





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Alison Jumper, Director of Parks, Natural Resources and Cultural Affairs

FROM: Ted Jack, Park Planning Superintendent

SUBJECT: **Contract Amendment #1 with TSW for Walker Park Phase One Construction**

RECOMMENDATION:

Staff recommends approving contract amendment #1 not to exceed \$101,500 to the contract with TSW, Inc. for additional design services and construction documents for Walker Community Park and an associated budget adjustment.

BACKGROUND:

Walker Park was identified as a priority project as part of the 2019 Bond. In late 2022, TSW was selected pursuant to RFQ 22-01, Selection 10, to prepare a master plan for Walker Community Park. After significant public engagement, the master plan was approved by the Parks, Natural Resources and Cultural Affairs Advisory Board on September 6th, 2023. Following the master plan approval, City Council approved a contract with TSW to prepare construction documents for a portion of Walker Park (Res 287-23 / 2023-1441).

During the same time frame, projects including Water and Sewer infrastructure improvements and Walker Park were being considered by City Council for American Rescue Plan Act (ARPA) expenditures, and subsequently, Walker Park was considered and earmarked as one of the eligible infrastructure projects. The water sewer project was approved in March 26, of 2024 and we proceeded to move forward with additional work for Walker Park Phase One.

This contract amendment will create construction documents for the additional amenities described in more detail below.

DISCUSSION:

Walker Park was originally identified as an eligible project for ARPA for many reasons. One of the main purposes of ARPA funding was to replenish tax losses to cities. COVID had major impacts to the Hotel Motel Tax, reducing anticipated revenues by approximately \$1M during 2021 compared to 2020.

Research shows parks played a positive and critical role in providing free and open accessible spaces for citizenry to replenish their mental and physical health during the pandemic. As a result, Fayetteville and many other park systems experienced increases in park use during the pandemic.

Walker Park serves a population that is more vulnerable to the negative effects of a pandemic and ARPA best practices suggested funding in low-income areas such as Walker Park were a priority.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

Current budget including \$2.4M in bond funds and \$500,000 in 2024 HMR Capital Improvement funds are anticipated to repurposed the current ball fields, add three pickleball courts, four sand volleyball courts, lighted multipurpose fields, 8-10 horseshoe courts, replace the old playground (built in 1999), sitting areas, and supporting infrastructure.

The additional \$1M is anticipated to create a dynamic social use area that features spaces revolving around yard games such as bocce, bag toss, additional horseshoe courts and ping pong. The space, located adjacent to the Razorback Greenway and serving as a welcoming entry feature is expected to include a climbing boulder and supporting spectating seating areas. These diverse areas offering many recreational and social opportunities help build community connections.

Construction documents are expected to be completed later this year with construction in 2025.

BUDGET/STAFF IMPACT:

Funds are available in General Fund fund balance.

ATTACHMENTS: SRF (#3), BA (#4), TSW Contract Amendment #1 (#5), Walker Park - Final Master Plan (#6)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-164

Contract Amendment #1 with TSW for Walker Park Phase One Construction

A RESOLUTION TO APPROVE AMENDMENT NO. 1 TO THE CONTRACT WITH TSW, INC. IN AN AMOUNT NOT TO EXCEED \$101,500.00 FOR ADDITIONAL DESIGN AND CONSTRUCTION DOCUMENTS FOR WALKER COMMUNITY PARK, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, on September 6, 2023, City Council passed Resolution No. 287-23 approving a Professional Services Contract with TSW, Inc. to prepare construction documents for a portion of Walker Park; and

WHEREAS, Amendment No. 1 will include additional bidding services and construction phase services.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign Amendment No. 1 to the contract with TSW, Inc. in an amount not to exceed \$101,500.00 for additional design and construction documents for Walker Community Park.

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.

City of Fayetteville Staff Review Form

2024-164

Item ID

6/18/2024

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

Ted Jack

5/29/2024

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approving contract amendment #1 not to exceed \$101,500 to the contract with TSW, Inc. for additional design services and construction documents for Walker Community Park and an associated budget adjustment.

Budget Impact:

2250.520.9255-5860.02

Parks Development

Account Number

Fund

46050.7550.2000

Walker Park Improvements, Phase One
Improvements

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 213,075.00

Expenses (Actual+Encum)

\$ 203,075.00

Available Budget

\$ 10,000.00

Does item have a direct cost? Yes

Item Cost

\$ 101,500.00

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 1,000,000.00

Remaining Budget

\$ 908,500.00

V20221130

Purchase Order Number: 2023-00000970

Previous Ordinance or Resolution # 287-23

Change Order Number: 1

Approval Date:

Original Contract Number: 2023-00000064

Comments:

Budget Year	Division	PARKS & RECREATION (520)	Adjustment Number
2024	/Org2		
	Requestor:	Alison Jumper	

Staff recommends approving contract amendment #1 not to exceed \$101,500 to the contract with TSW, Inc. for additional design services and construction documents for Walker Community Park and associated budget adjustment.

	COUNCIL DATE:	6/18/2024
	ITEM ID#:	2024-164
		<i>Holly Black</i>
		<i>5/31/2024 8:28 AM</i>
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]



CONTRACT AMENDMENT

Design Services

This AMENDMENT (the 'Amendment') is dated and in effect as of May __, 2024

This amendment (the "Amendment") is made by:

Between:

Client: City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, AR 72701

Hereafter referred to as "City", and

Consultant: TSW
1447 Peachtree Street, Suite 850
Atlanta, GA 30309

Hereafter referred to as "Consultant".

This is an amendment to the contract for:

Walker Park Phase One Improvements (Resolution 287-23)

Dated December 19, 2023, and authorized December 19, 2023 (the "AGREEMENT").

The Agreement is amended as follows:

See Exhibits A, B & C for scope, fees, and work areas.

Tunnell, Spangler & Associates, Inc.
d/b/a TSW by Adam Williamson

Mayor, Lioneld Jordan
City of Fayetteville

May 23, 2024

Date

Date

Exhibit A: Scope of Services

Construction Drawings Amendment #1, Walker Park

The construction drawings are for an additional area identified in the 2023 Master Plan and generally outlined in Exhibit C: Work Areas. The City may have ARPA funds that could be used for this phase. The project will consist of adding a pavilion, site furnishings, landscape, and hardscape on the west side of Spout Spring Branch Creek and on the east side, a social node area able to support park programming and events and featuring “yard games”, climbing boulder, seating areas, and supporting infrastructure. These improvements will tie seamlessly into work in the original contract and will be bid with that work. The estimated construction budget for the project is approximately \$1,000,000.

The team will consist of the following:

- TSW (project management and landscape architecture)
- MCE (surveying/civil engineering)
- Covalent Consulting (electrical engineering)
- Stability Engineering (structural engineering)

Task 1: Kick-Off + Coordination

1.1 TSW Team will conduct an initial consultation session (Teams or Zoom meeting) Project goals and timelines for the new phase will be finalized during this meeting.

1.2 TSW will manage the project, including all subconsultants, to ensure all work is completed accurately and on time. TSW will also handle all billing of each subconsultant.

Task 2: Design Development

2.1 Based on the master plan layout and survey the team will develop the drawings. Design Development drawings will include, but not be limited to:

- Revised Overall Site Plan
- Enlarged Plans for Key Areas
- Hardscape and Landscape Call Outs
- Spot Grading Plan
- Construction Details
- Preliminary Cost Model for Phase I

2.1.1 TSW Team QA/QC review of Design Development documents.

2.1.2 City review of Design Development documents (approximately 3 weeks).

Task 3: Construction Documentation

3.1 Based on feedback from Task 3, the TSW Team will advance Design Development drawings into Construction Documents (100% Final Plans). Construction Documents will include, but not be limited to:

- Cover Sheet
- General Notes
- Existing Conditions Plan
- Site Demolition Plan
- Construction Item Plan
- Site Layout Plan
- Grading and Drainage Plan
- Tree Preservation Plan
- Erosion Control Plan
- Utility Plan and Profiles
- Construction Details
- Lighting Layout, Plans, and Details
- Electrical Plans
- Project Manual Format Specifications
- Revised Cost Model
- Pavilion Plans and Elevations

The drainage design and reporting will be as prescribed by city code. At the time of this proposal, it is assumed that impervious area will be decreased from existing and only require a Green Stormwater Practice (GSP) Worksheet. Design for stormwater detention or water quality is excluded from this contract.

3.1.2 TSW Team QA/QC review of Draft Construction Documents.

3.1.3 City review of Draft Construction Documents (approximately 3 weeks).

Task 4: Permitting Services

4.1 The TSW Team will identify necessary permitting early in the planning process and work with local authorities to determine those requirements.

4.1.1 The team will provide project coordination with the project team, utility service providers, and permitting with the City of Fayetteville required to obtain permits necessary for project construction.

City Meeting Attendance: MCE shall attend the following city meetings required for project approval:

- Pre-application Meeting
- Technical Plat Review
- Subdivision Committee (if required)
- Planning Commission (if required)

Additional Meetings: Site visits and project design team meetings will be conducted and attended by McClelland during the design and coordination phases of the project.

4.1.2 Utility Coordination: Coordination with the water and sewer departments for private utility services and connections will be provided. Additionally, MCE will coordinate electric services with SWEPCO. Information gathered during coordination will be shared with the project team and reflected within the final utility plan of the construction document set.

Task 5: Bidding + Construction Administration Services

5.1 The TSW Team will provide Bid Phase Services that include, but not limited to:

- Attend a pre-bid meeting (if requested)
- Issue addenda as necessary
- Respond to bidders as necessary
- Assist the City with the evaluation of the bidders

5.2 The TSW Team will provide Construction Phase Services that include, but not limited to:

- Respond to request for information as needed
- Monthly virtual meetings and/or site visits
- Prepare construction observation reports as needed
- Post Permit and Construction Phase Drawing Revisions

Services Not Included:

- Record drawings
- Engineers' certification of improvements
- Off site utility plans
- Off site street improvement plans such as road widening
- LEED permitting / certification
- Construction staking services
- Conditional-use permits or variances (including variances for work within side the streamside protection areas)
- Materials testing
- Perspectives, renderings, and models
- Traffic studies
- Environmental site assessments
- Environmental impact analysis
- Replatting
- Easement Plat
- Alley vacation, easements abandonments and right of way dedications
- Historical or archeological studies

- Major stormwater drainage plans or relocation i.e. box culverts, large ditches and stormwater conductors
- Wetlands delineation / 404 permitting
- Boundary Survey
- Rezoning
- Geotechnical reporting
- Retaining wall design
- Elevation certificates or detailed study of areas within or adjacent to the Spout Spring Branch

Exhibit B: Fees

Tasks 1-4 will be completed for \$79,000. Tasks 5 and Reimbursable Expenses will be completed/billed as a NOT-TO-EXCEED (NTE) amount of \$22,500. Billings will include hours for team members.

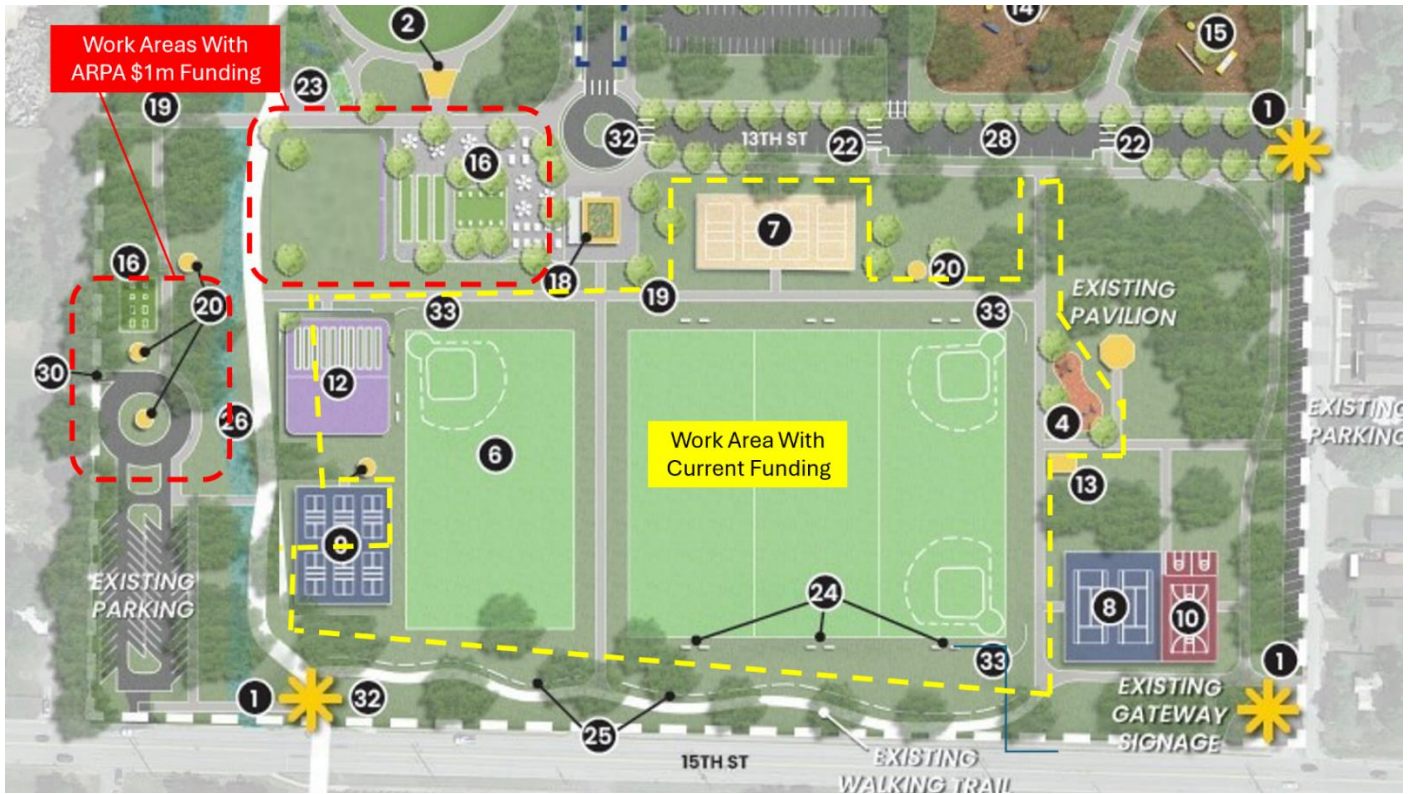
The project schedule is anticipated to increase by a total of 3 to 4 months.

Fee Breakdown by Task

TASK	FEE
Task 1: Kick-Off + Coordination	\$5,000
Task 2: Design Development	\$10,000
Task 3: Construction Documentation	\$59,000
Task 4: Permitting	\$5,000
Work Tasks (1-4) Total	\$79,000
Task 5: Bidding + Construction Admin	\$20,000 NTE
Reimbursable Expenses	\$2,500 NTE
Project Total	\$101,500

Maximum fee with expenses is \$101,500

Exhibit C: Work Areas





- | | | | |
|----------------------------|--|---|--|
| 1 ENTRY GATEWAY | 10 BASKETBALL COURTS (EXISTING) | 18 CONCESSIONS + RENTAL BUILDING (INCL. RESTROOM) | 28 PARALLEL PARKING (ALONG 7TH ST, 13TH ST) |
| 2 STAGE | 11 RELOCATED DISC GOLF HOLES | 19 NEW WALKING TRAIL | 29 EXPANDED SKATEPARK |
| 3 0-5 PLAYGROUND | 12 HORSESHOES | 20 SMALL PAVILION | 30 DUMPSTER |
| 4 5+ PLAYGROUND | 13 RESTROOM | 21 LARGE PAVILION | 31 FOOD TRUCK PARKING (ALONG BLOCK AVE) |
| 5 OPEN LAWN | 14 LARGE DOG PARK | 22 PEDESTRIAN CROSSWALKS WITH BUMP-OUTS | 32 PUBLIC ART OPPORTUNITY |
| 6 MULTI-USE FIELDS | 15 SMALL DOG PARK | 23 TRAILHEAD | 33 BASEBALL BACKSTOP |
| 7 VOLLEYBALL COURTS (SAND) | 16 OUTDOOR LOUNGE /GATHERING PLAZA WITH YARD GAMES | 24 BLEACHERS | 34 DECK OVERLOOK |
| 8 TENNIS COURTS (EXISTING) | 17 ADVENTURE ZONE / TREETOP QUEST | 25 FENCE | 35 BOULDERING/ CLIMBING AREA |
| 9 PICKLEBALL COURTS | | 26 STREAM RESTORATION ALONG SPOUT SPRING BRANCH | 36 INTERACTIVE PLAY AREA AT CREEK |
| | | 27 EXPANDED PARKING | 37 NATIVE PLANTINGS - REVEGETATION AREA + IMPROVED LANDSCAPING |



WALKER PARK MASTER PLAN

10 W 15TH ST FAYETTEVILLE, AR 72701

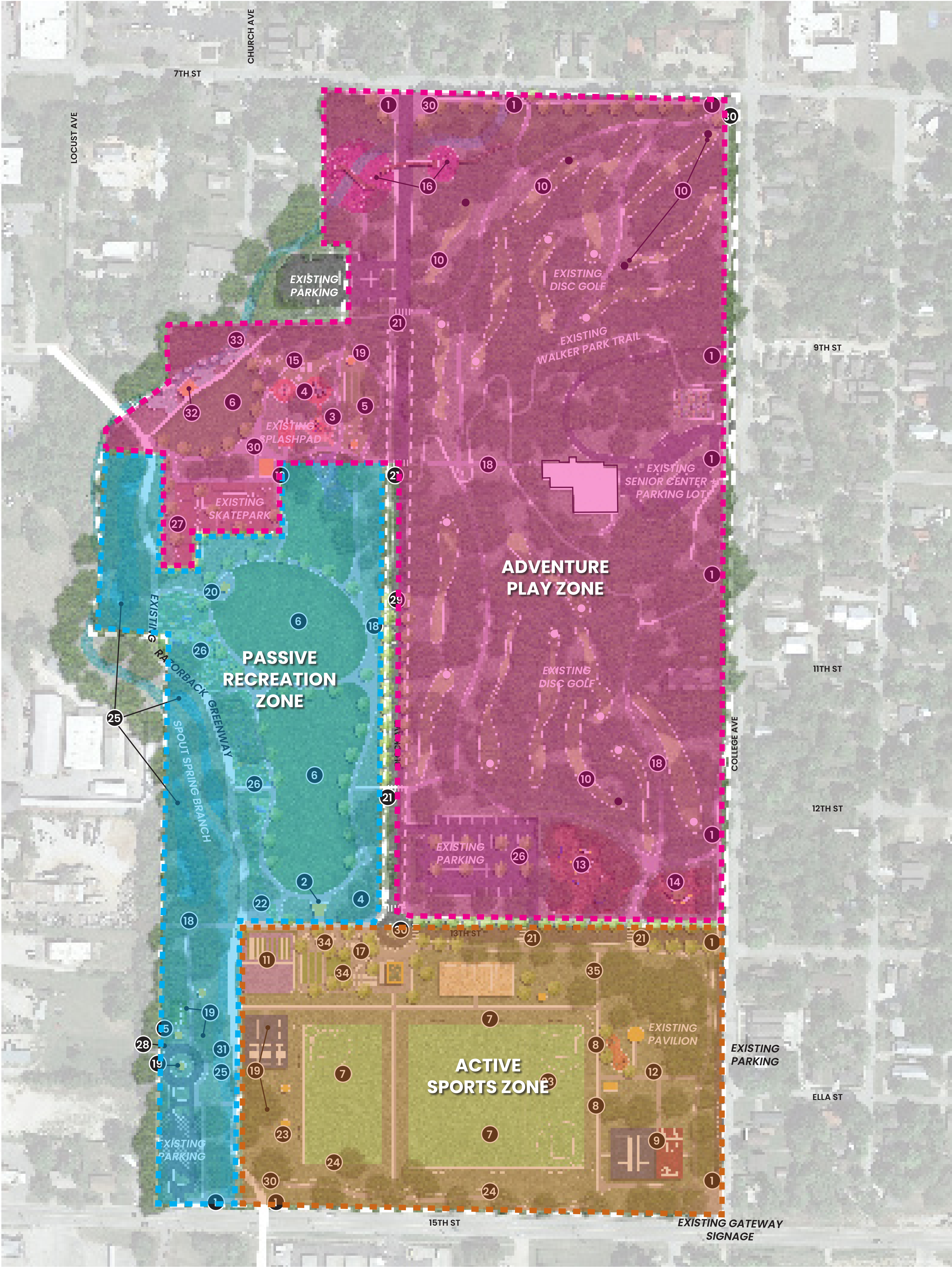
August 2023



1" = 100'-0"



Adopted by Park and Recreation Advisory Board, September 6, 2023.



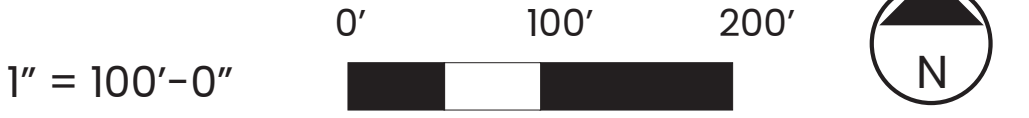
- | | | | |
|------------------------|-------------------------------------|---|--|
| 1 ENTRY GATEWAY (TYP.) | 10 RELOCATED DISC GOLF HOLES | 20 LARGE PAVILION (TYP.) | 30 PUBLIC ART OPPORTUNITY |
| 2 STAGE | 11 HORSESHOES | 21 PEDESTRIAN BUMP-OUTS (TYP.) | 31 CREEK ACCESS |
| 3 0-5 PLAYGROUND | 12 RESTROOM | 22 TRAILHEAD | 32 DECK OVERLOOK |
| 4 5+ PLAYGROUND | 13 LARGE DOG PARK | 23 BLEACHERS | 33 INTERACTIVE PLAY AREA AT CREEK |
| 5 FIELD GAMES | 14 SMALL DOG PARK | 24 FENCE | 34 BEER GARDEN WITH SEATING AND LAWN GAMES |
| 6 OPEN LAWN | 15 OUTDOOR LOUNGE / GATHERING PLAZA | 25 STREAM RESTORATION + EDUCATION AREA | 35 TRACK |
| 7 MULTI-USE FIELDS | 16 ADVENTURE ZONE / TREETOP QUEST | 26 EXPANDED PARKING | 36 NATIVE PLANTINGS - REVEGETATION AREA |
| 8 TENNIS COURTS | 17 RESTAURANT + RENTALS BUILDING | 27 EXPANDED SKATEPARK | |
| 9 BASKETBALL COURTS | 18 NEW TRAIL (TYP.) | 28 DUMPSTER | |
| | 19 SMALL PAVILION (TYP.) | 29 FOOD TRUCK PARKING (ALONG BLOCK AVE) | |



WALKER PARK CONCEPT PLAN | PARK ZONES 10 W 15TH ST FAYETTEVILLE, AR 72701

2023.06.01

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MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Matt Casey, Engineering Design Manager

SUBJECT: **Approval of Change Order #1 in the amount of \$371,992.50 with APAC-Central, Inc. for the construction of the 15th and Razorback Rd. Intersection Improvements Project, and approval of a budget adjustment.**

RECOMMENDATION:

Staff recommends approval of Change Order #1 in the amount of \$371,992.50 with APAC-Central, Inc. for the construction of the 15th and Razorback Rd. Intersection Improvements Project, and approval of a budget adjustment.

BACKGROUND:

The intersection of Razorback Road and 15th Street is a large intersection with multiple lanes entering the intersection on each leg. The intersection is currently controlled as a four way stop with stop signs on each leg. Being located in close vicinity of the Baum-Walker Stadium, Pinnacle Foods, and multiple apartment complexes, this intersection sees a high volume of traffic. Improvements to this intersection were identified as a priority project in the 2019 Transportation Bond Program.

The City of Fayetteville Engineering Division has prepared the design for this project. On September 5, 2023, the City Council approved a construction contract with APAC-Central, Inc. in the amount of \$1,809,765.00. The construction is currently underway and will be completed in July of 2024.

DISCUSSION:

Razorback Road from the intersection with 15th Street to the Intersection with MLK Jr. Blvd. is on the 2024 list to receive an asphalt overlay. Staff has worked with the contractor to provide pricing for the overlay and striping since the contractor is already onsite. This work will be done in conjunction with the paving planned for the 15th street intersection project. In addition to the pavement addition, this change order adds an item for some additional concrete removal that was encountered during the construction. This amount (\$1,680.00) will be covered by the approved project contingency.

BUDGET/STAFF IMPACT:

The change order is funded by the 2019 Transportation Bond Program using funds from the Pavement Maintenance and Overlays Project. The Budget Adjustment moves the funds from this project into the 15th and Razorback Project.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

ACCOUNT	PROJECT	AMOUNT
4702.860.7222-5809.0046020.7222		\$371,992.50

ATTACHMENTS: SRF (#3), BA (#4), Change Order #1 - Signed (#5)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-171

Approval of Change Order #1 in the amount of \$371,992.50 with APAC-Central, Inc. for the construction of the 15th and Razorback Rd. Intersection Improvements Project, and approval of a budget adjustment.

A RESOLUTION TO APPROVE CHANGE ORDER NO. 1 TO THE CONTRACT WITH APAC-CENTRAL, INC. IN THE AMOUNT OF \$371,992.50 FOR THE CONSTRUCTION OF THE 15TH AND RAZORBACK ROAD INTERSECTION IMPROVEMENTS PROJECT, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, City Staff recommends adding to the contracted work with APAC-Central, Inc. for the 15th Street and Razorback Road Intersection Improvement the asphalt overlay and striping of Razorback Road from 15th Street to Martin Luther King Boulevard which is on the 2024 asphalt overlay list.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign Change Order No. 1 to the contract with APAC-Central, Inc. in the amount of \$371,992.50 for the construction of the 15th and Razorback Road Intersection Improvements Project to add asphalt overlay and striping of Razorback Road from 15th Street to Martin Luther King Boulevard. A copy of Change Order No. 1 is attached to this Resolution and made a part hereof.

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.

City of Fayetteville Staff Review Form

2024-171

Item ID

6/18/2024

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

Matt Casey

5/30/2024

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Change Order #1 in the amount of \$371,992.50 with APAC-Central, Inc. for the construction of the 15th and Razorback Rd. Intersection Improvements Project, and approval of a budget adjustment.

Budget Impact:

4702.860.7222-5809.00

Street Project 2022 Bonds

Account Number

Fund

46020.7222

15th St / Razorback Rd. Int

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 2,163,018.00

Expenses (Actual+Encum)

\$ 1,903,017.93

Available Budget

\$ 260,000.07

Does item have a direct cost? Yes

Item Cost

\$ 371,992.50

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 371,993.00

Remaining Budget

\$ 260,000.57

Purchase Order Number: 2023-00000780

Previous Ordinance or Resolution # 183-23

V20221130

Change Order Number: 1

Approval Date:

Original Contract Number: 2023-00000046

Comments:

Budget Year	Division	Adjustment Number
2024	ENGINEERING (621)	
	Requestor: Matt Casey	

Approval of Change Order #1 in the amount of \$371,992.50 with APAC-Central, Inc. for the construction of the 15th and Razorback Rd. Intersection Improvements Project, and approval of a budget adjustment.

	COUNCIL DATE:	6/18/2024
	ITEM ID#:	2024-171
	Holly Black	
	5/30/2024 11:14 AM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]



CHANGE ORDER

Contract Title: Razorback and 15th Intersection Improvements

Change Order No. 1

Date of Issuance May 29, 2024

To Contractor: APAC Central

ORDINANCE/RESOLUTION:183-23

The Contract is changed as follows:

Effective September 5, 2023

	Bid	Bid	Previous	Unit	Contract	Revised	Revised	Original	Revised
Contract	Item	Item	Estimated	of	Unit	Estimated	Unit	Estimated	Estimated
Changes	No.	Description	Quantity	Measure	Price	Quantity	Price	Cost	Cost
	101	R & D of PCC Base CO-1	0	SY	\$0.00	15	\$112.00	-	\$1,680.00
	102	Mobilization CO-1	0	LS	\$0.00	1	\$5,000.00	-	\$5,000.00
	103	2" Asphalt Concrete Hot Mix Surface Course CO-1	0	SY	\$0.00	18,483	\$16.50	-	\$304,969.50
	104	6" Solid White Pavement Marking Thermo CO-1	0	LF	\$0.00	2,256	\$2.00	-	\$4,512.00
	105	Maintenance of Traffic CO-1	0	LS	\$0.00	1	\$21,500.00	-	\$21,500.00
	106	6" Solid Double Yellow Pavement Marking Thermo CO-1	0	LF	\$0.00	898	\$2.00	-	\$1,796.00
	107	12" Solid White Pavement Marking Thermo CO-1	0	LF	\$0.00	631	\$17.00	-	\$10,727.00
	108	Brick Pattern Trail Crossing Thermo CO-1	0	LF	\$0.00	34	\$480.00	-	\$16,320.00
	109	Left Arrow Pavement Symbol Thermo CO-1	0	EA	\$0.00	7	\$364.00	-	\$2,548.00
	110	Only Pavement Symbol Thermo CO-1	0	EA	\$0.00	7	\$420.00	-	\$2,940.00
Summation of Cost								-	\$371,992.50
Net Cost for this Change Order									\$371,992.50

Not valid until signed by the Owner

The original Contract Price was	\$	1,809,765.00
Net change by previously authorized change orders	\$	-
The Contract Price prior to this Change Order was	\$	1,809,765.00
The Contract Price will be adjusted by	\$	371,992.50
The new Contract Price including this Change Order will be	\$	2,181,757.50
The Contract Time(s) will be increased by	65	calendar days
Required dates of Completion as of the date of this Change Order therefore are:		
Substantial Completion		5-Aug-24
Final Completion		4-Sep-24

NOTE: This summary does not reflect changes in the Contract Price or Time(s) which have been authorized by Work Change Directives not incorporated in this or previous Change Orders.

APAC CENTRAL

CITY OF FAYETTEVILLE

Shaun Long

Digitally signed by Shaun Long
dn: cn=Shaun Long, email=shaun.long@apac.com,
ou=APAC Central, Inc., OU=Estimator,
c=US

05-30-24

BY _____ DATE _____

BY _____ DATE _____



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU: Terry Gulley, Asst Public Works Director - Ops
FROM: Ross Jackson, Jr., Fleet Operations Superintendent
SUBJECT: **TIRES, TUBES AND SERVICES**

RECOMMENDATION:

A RESOLUTION TO APPROVE THE PURCHASE OF TIRES, TUBES, AND SERVICES FROM APPROVED MANUFACTURERS ON AN AS NEEDED BASIS PURSUANT TO A NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO) VALUEPOINT COOPERATIVE PURCHASING AGREEMENT, THROUGH JUNE 30TH, 2027 AND ANY FUTURE RENEWAL PERIODS

BACKGROUND:

Resolution 107-24 authorized the city to continue to purchase tires, tubes, and services available on a NASPO ValuePoint cooperative purchasing contract through 06/30/2024 as they were finalizing the new contract awards. NASPO has recently awarded their new contract which will now be effective on 07/01/24 through 06/30/27 with up to (3) additional one-year renewals. Fleet is recommending approval of the new contract.

DISCUSSION:

The Fleet Operations Division purchases and stocks inventory for front line high-use equipment to assist with decreasing downtime. Both Fleet Operations and Purchasing support this new contract and this will allow us to continue purchasing tires through local vendors for the duration of the new contract. This cooperative purchasing contract has been historically recognized and utilized by the State of Arkansas and 39 other states.

BUDGET/STAFF IMPACT:

Funds for the acquisition of tires have been budgeted in Fleets annual operating budget.

ATTACHMENTS: SRF (#3), 2024 Portfolio Map (#4), RFP - Tires, Tubes and Services (#5), State of Iowa Mail - Intent to Award - Redacted (#6), Approved NASPO Contract - Screenshot (#7), NASPO Contract - Goodyear - Signed (#8), NASPO Contract - Michelin - Final (#9), Goodyear - Price List (#10), Michelin - Price List (#11)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-186

TIRES, TUBES AND SERVICES

A RESOLUTION TO APPROVE THE PURCHASE OF TIRES, TUBES, AND SERVICES FROM APPROVED MANUFACTURERS ON AN AS NEEDED BASIS PURSUANT TO A NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS VALUEPOINT COOPERATIVE PURCHASING AGREEMENT, THROUGH JUNE 30, 2027 AND ANY FUTURE RENEWAL PERIODS

WHEREAS, Resolution 107-24 authorized the city to continue to purchase tires, tubes and services available on a NASPO ValuePoint cooperative purchasing contract through 06/30/2024 as they were finalizing the new contract awards; and

WHEREAS, NASPO has recently awarded their new contract which will now be effective on 07/01/24 through 06/30/27 with up to three additional one-year renewals.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the purchase of tires, tubes, and services from approved manufacturers on an as needed basis, pursuant to a National Association of State Procurement Officials ValuePoint Cooperative Purchasing Agreement, through June 30, 2027 and any future renewal periods.

City of Fayetteville Staff Review Form

2024-186

Item ID

6/18/2024

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

Ross Jackson

5/31/2024

FLEET OPERATIONS (770)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO APPROVE THE PURCHASE OF TIRES, TUBES, AND SERVICES FROM APPROVED MANUFACTURERS ON AN AS NEEDED BASIS PURSUANT TO A NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO) VALUEPOINT COOPERATIVE PURCHASING AGREEMENT, THROUGH JUNE 30TH, 2027 AND ANY FUTURE RENEWAL PERIODS

Budget Impact:

9700.770.1910-5214.01

Shop

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 273,000.00

Expenses (Actual+Encum)

\$ 134,550.69

Available Budget

\$ 138,449.31

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 138,449.31

V20221130

Purchase Order Number:

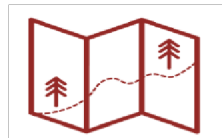
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



PORTFOLIO TITLE: [Tires, Tubes and Services \(2024 - 2029\)](#)

LEAD STATE: Iowa

OVERVIEW:

The purpose of the RFP was to establish a Master Agreement with qualified Offerors to provide competitive pricing for tire products and services through their retail distribution networks to all Participating States.

INITIAL TERM: July 1, 2024 to June 30, 2027 (total - three (3) years)

RENEWALS: Up to three (3) additional one-year renewals through June 30, 2030

TOTAL TERM POSSIBLE: Six (6) years

AWARDED VENDORS:

Bridgestone
Continental
Goodyear
Michelin

PRODUCT CATEGORIES:

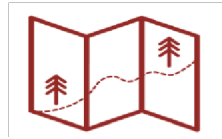
The scope includes specific full lines of tires, tubes, and related services in the subcategories listed below:

Tires – Subcategories:

1. Pursuit and Performance Tires
2. Automobile/Passenger Vehicles
3. Light Duty Trucks: Radial and Bias
4. Medium Commercial/Heavy Duty Trucks/Buses
5. Off-the-Road OTR: Radial and Bias
6. Agriculture/Farm
7. Industrial
8. Specialty Tires
9. EV Tires
10. Retread

Tubes - All inner tubes shall be standard production first line, heavy duty butyl tubes or natural rubber of fresh stock. All tubes shall be of quality not less than the tubes normally furnished in representative quantities by OEM as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tubes shall conform to all applicable federal specifications. All tubes shall be new and shall have been produced or manufactured within the last one (1) year prior to installation or delivery to the purchasing Entity.

DISCLAIMER: This document is provided by NASPO ValuePoint and is for informational purposes only. While NASPO ValuePoint has worked to ensure the validity of the information provided, the user should not rely solely on the information contained in this document. Official records are maintained by the procurement office of the state that led the solicitation and should be reviewed prior to making any decision.



Services –

1. Tire installation
2. Change tires: dismount and mount
3. Flat repair: remove, repair, and mount
4. Flat repair: off vehicle
5. Tire rotation: rotate mounted tires
6. New valve stem: rubber or metal
7. Wheel balance: computer spin balance
8. Wheel balance: computer spin balance and valve stem combination
9. Foam filling
10. Alignment services
11. Studding: installing metal implants
12. Siping: installing slots to enhance tire tread
13. Used tire recycle and disposal
14. Bulk disposal
15. Tire pressure monitoring system (TPMS)

SUPPLIERS AVAILABLE:

- ✓ **Bridgestone**
- ✓ **Continental**
- ✓ **Goodyear**
- ✓ Michelin



*Suppliers with **bolded** names are incumbents that were awarded a Master Agreement through the previous RFP issues by the Lead State of Iowa.

KEY BENEFITS:

This re-solicited NASPO ValuePoint portfolio will continue to provide tires, tubes, and services to a very large participant base. The biggest key benefit is the wide offering this provides to diverse public agencies for its fleet, rescue vehicles, emergency and construction equipment, etc. The volume of tire sales historically provides benefits of significant discounts when purchasing and installing tires for public service.

PRICING:

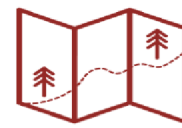
The team focused on best value procurement and it was practiced in all aspects of the procurement process. The cost evaluation was carried out to ensure best value. The contract terms and conditions were revamped to manage and effectively meet the demands of a volatile rubber market. It allows more dynamic control of the pricing with a six-month cadence of pricing updates.

The Lead State and the Sourcing Team also established a review process that evaluated the quality and experience of the Offeror to ensure that the contract would leverage the buying power of the nation and fulfill the contract requirements of quality, delivery, warranty, and service in addition to competitive pricing.

PROCUREMENT BACKGROUND:

These contracts are the result of the publicly posted NASPO ValuePoint solicitation number RFP0223005113 led by the State of Iowa. The NASPO Executive Council approved conducting a solicitation for Tires, Tubes and Services to replace the previous expiring contract.

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STATES ON SOURCING TEAM:

- ★ Iowa – Lead State
- ★ Connecticut
- ★ Massachusetts
- ★ Montana
- ★ Utah



SOLICITATION INFORMATION:

- Number: RFP0223005113
- Released: 07/27/2023
- Closed: 09/13/2023
- Amendments: 2 addendums: answers to questions
- Pre-proposal conference: 08/09/2023
- Pre-proposal conference attendance: Bridgestone, Continental, Goodyear, Michelin

PUBLIC POSTING OF SOLICITATION:

Website Posted On: State of Iowa

Posting Link:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=DASlowa>

Days Publicly Posted: 48

PUBLIC OPENING

Sealed proposals were opened by the lead state following the closing date.



VENDOR RESPONSES:

- Number of Vendor Responses Received: 4
- Number of Non-Responsive Vendor Responses: 0
- Number of Vendor Responses Evaluated: 4

EVALUATIONS:

In-person evaluations were led by the Lead State of Iowa and technical evaluation that included consensus scoring was completed by the Sourcing Team on 10/18/2023.

EVALUATION CRITERIA:

The Lead State and Sourcing Team used a pass/fail and weighted score methodology of selection with both objective and subjective criteria. Criteria used in evaluation included:

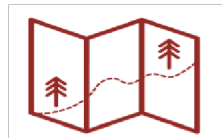
Stage 1: Initial Responsiveness Evaluation

State 2: Mandatory Minimum Requirements

Stage 3: Technical Criteria Evaluation

Technical Criteria	Points Possible
Offeror's Experience, Background, References, Personnel	50
Ability to Meet the Scope of Work	50
Service Area & Availability of Products	150
Education & Compliance of Approved Distributors	125
Customer Service	125
Emergency Response & Roadside Assistance	50
Marketing NASPO	100
Green Initiative	50
Stage 3 Total:	700

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Stage 4: Cost Evaluation - Costs were evaluated based on the weighted cost evaluation components as follows:

Tire - Subcategory		Points Possible
B1.	Pursuit and Performance Tires	75
B2.	Automobile/Passenger Tires	75
B3.	Light Duty Trucks	75
B4.	Medium Commercial/Heavy Duty Trucks/Buses	75
Stage 4 Total:		300

Final Score Point Summary

Stage	Total Points Possible
Technical Criteria Evaluation	700
Cost Evaluation	300
Total:	1000

SCORING:

Responses were scored according to the RFP's Evaluation Criteria. Anyone interested in receiving a copy of the scoring that was used to determine the awards for this RFP should contact the Lead State as identified on the portfolio's NASPO ValuePoint website.

AWARD:

Awards were determined by the Lead State and the Sourcing Team based on the scoring methodology and those proposals deemed most advantageous to the Lead State and potential Participating and Purchasing Entities. The Lead State awarded the Contract(s) to the Responsible Offeror(s) whose Responsive Proposal the agency believed will provide the best value to the Lead State and NASPO ValuePoint. In analyzing "best value" and "most advantageous", there was a clear natural break between the incumbents and a new Offeror (please see Total Score Comparison tab of the Evaluation Workbook spreadsheet), however, the Lead State and Sourcing Team deemed the lower scoring new Offeror did indeed pass the 400 technical point threshold to move on to the cost, and the cost was within range in comparison to the other proposals. The Lead and Sourcing Team felt strongly that there was an advantage of awarding to Michelin based on the criteria set forth to provide more options and more coverage rather than disqualifying them by implementing a natural break.

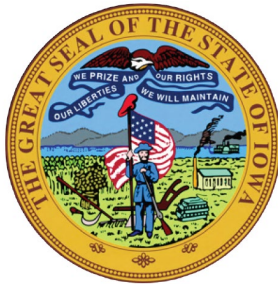
SUPPLIERS RECOMMENDED FOR AWARD

- ✓ Bridgestone
- ✓ Continental
- ✓ Goodyear
- ✓ Michelin



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REQUEST FOR PROPOSALS **for** **Tires, Tubes, and Services** **Issued by** **THE STATE OF IOWA**



In collaboration with



SOLICITATION NUMBER RFP0223005113

RFP WEBSITE:

<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=DASlowa>

**REQUEST FOR PROPOSALS FOR
TIRES, TUBES, AND SERVICES**

Issued by the **State of Iowa**
Solicitation Number **RFP0223005113**



RFP SUMMARY

I. OVERVIEW

This Request for Proposals (RFP) is being issued by the State of Iowa ("Lead State") in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements for tires, tubes, and services.

NASPO ValuePoint is a division of the National Association of State Procurement Officials (NASPO), a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. In accordance with NASPO ValuePoint's Lead State™ model, the Lead State is issuing this RFP, evaluating responses, and establishing Master Agreements with the support and assistance of a Multistate Sourcing Team™ composed of individuals from other member states, representing a broad range of perspectives that ensure the RFP incorporates best practices recognized by public entities across the country.

NASPO ValuePoint does not charge fees to NASPO members or other potential users, including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories, to use NASPO ValuePoint Master Agreements. By leveraging the collective volume of potential purchases nationwide, NASPO ValuePoint is able to offer customers the best value in cooperative contracting while giving vendors the opportunity to reach multiple markets through a single solicitation. In 2021, contractors recorded a combined \$16.94 billion in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP, including a combined \$204.48 million in sales through the current Tires, Tubes, and Services portfolio.

More information about NASPO and NASPO ValuePoint can be found at www.naspo.org and www.naspovaluepoint.org.

II. GENERAL INFORMATION AND INSTRUCTIONS

A. RFP Contact. The following individual is the sole contact for this RFP:

David Kundid
Purchasing Agent III
State of Iowa
David.kundid@iowa.gov

B. RFP Website. The following website is the sole official source for RFP information and updates:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=DASlowa>

C. Contract Term. The initial term of the Master Agreement(s) resulting from this RFP is anticipated to be three (3) years, with the option to exercise renewals totaling up to an additional three (3) years following the initial term, upon mutual agreement by the Lead State and Contractor.

D. RFP Documents. This RFP consists of this RFP Summary, the following attachments, and any information or materials posted by the Lead State to the RFP Website, as amended:

1. Attachment 1, RFP Terms and Conditions
2. Attachment 2, Scope of Work
3. Attachment 3, RFP Evaluation Plan
4. Attachment 4, Sample Master Agreement
5. Attachment 5, Potential Participation

REQUEST FOR PROPOSALS FOR TIRES, TUBES, AND SERVICES

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6. Attachment 6, Protest Information
7. Attachment 7, Offeror Information, Acknowledgements, and Certifications
8. Attachment 8, Offeror Response Worksheet
9. Attachment 9, Cost Proposal
10. Attachment 10, Proposed Modifications to Sample Master Agreement
11. Attachment 11, Claim of Business Confidentiality

E. Important Dates.

1. **RFP Open Date:** July 27, 2023
 2. **RFP Pre-proposal Conference:** August 9, 2023, 1:00PM Central Time
 3. **RFP Q&A Deadline:** August 23, 2023
 4. **RFP Close Date:** September 13, 2023, 3:00PM Central Time
5. Attendance at the RFP Pre-proposal Conference is optional, and registration is required.

Optional Pre-Proposal Conference will be held on:

Physical Location of Pre-Proposal Conference:

Department of Administrative Services
Hoover Building, Level A – Procurement Conference Room
1305 East Walnut Street
Des Moines, IA 50319

Offerors shall attend virtually via Google Meets. To participate virtually, contact the RFP Contact for Google Meets information.

Dates and deadlines are subject to change. Offerors should continue checking the RFP Website for the most up-to-date information.

F. How to Ask Questions.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. For questions about the content of this RFP, send your questions via email to the RFP Contact. Questions must reference the specific section of the RFP to which the question relates.
3. For assistance with technical issues associated with the RFP Website, contact RFP Contact.

G. How to Respond.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. Prepare a proposal that:
 - Follows the requested format;
 - Includes the Solicitation Number on all materials making up the proposal;
 - Addresses each question and request for a response in this RFP, including all questions in Attachment 8, Offeror Response Worksheet;
 - Clearly demonstrates your ability to meet the Scope of Work described in Section 2 and Attachment 2; and
 - Includes all required submissions identified in Section 2.
3. Submit your proposal by the RFP Close Date via email to the RFP Contact. For purposes of this RFP, Offeror's "proposal" includes any information submitted directly through the RFP Website.

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III. SCOPE OF WORK

A detailed description of the Deliverables being sought through this RFP is attached as Attachment 2, Scope of Work.

The scope of this RFP and its resulting Master Agreement(s) is intended to benefit all state departments, institutions, agencies, and political subdivisions and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories. Therefore, **Offerors should not interpret the Scope of Work to be associated with or limited to any specific purchase, implementation, project, need, or program** within the Lead State or any other state or eligible entity. Proposals should be generally applicable to all potential Participating and Purchasing Entities, except where specificity is requested.

IV. OFFEROR RESPONSE

A. Required Submissions. The following must be submitted with your proposal:

1. Any response required to be submitted directly through the RFP Website;
2. Completed and signed Attachment 7, Offeror Information, Acknowledgements, and Certifications
3. Completed Attachment 8, Offeror Response Worksheet
4. Completed Attachment 9, Cost Proposal, submitted as a separate document and separate file, if submitting electronically
5. Completed Attachment 10, Proposed Modifications to Sample Master Agreement
6. Redlined copy of Attachment 4, Sample Master Agreement, if proposing modifications
7. Completed and signed Attachment 11, Claim of Business Confidentiality
8. Redacted copy of proposal clearly marked as such, if claiming confidential, proprietary, or protected information

B. Other Documents. The following are informational only and do **not** need to be submitted with your proposal:

1. Attachment 1, RFP Terms and Conditions
2. Attachment 2, Scope of Work
3. Attachment 3, RFP Evaluation Plan
4. Attachment 4, Sample Master Agreement
5. Attachment 5, Potential Participation
6. Attachment 6, Protest Information

V. EVALUATION AND AWARD PROCESS

A. Proposals will be sealed until the RFP Close Date. After opening, proposals will be evaluated in stages as set forth in this section and further detailed in Attachment 3, RFP Evaluation Plan.

1. **Stage 1: Initial Responsiveness.** Proposals will be reviewed for completeness and initial responsiveness. Proposals omitting required documents or responses may be rejected in accordance with Attachment 1, RFP Terms and Conditions.
2. **Stage 2: Mandatory Minimum Requirements.** Complete and responsive proposals will be reviewed for compliance with mandatory minimum requirements. Proposals failing to meet or exceed all mandatory minimum requirements identified in Attachment 3, RFP Evaluation Plan may be rejected in accordance with Attachment 1, RFP Terms and Conditions.

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3. **Stage 3: Technical Criteria.** Proposals meeting or exceeding the mandatory minimum requirements will be evaluated against the Technical Criteria set forth in Attachment 3, RFP Evaluation Plan. The evaluation team committee will fully evaluate and score all responsive Proposals submitted by responsible Offerors in accordance with this section.
4. **Stage 4: Cost.** After the Technical Proposals are evaluated and scored, the Cost Proposals will be opened and scored.

Cost Proposals will remain sealed during the evaluation of the Technical Proposals and any demonstrations. Only prospective Offerors who obtain the minimum score for their Technical Proposals will be considered during the cost evaluation phase of the review process. When a Technical Proposal does not meet the minimum score, the associated Cost Proposal will remain unopened and will be returned to the Offerors upon request after the Lead State issues a Notice of Intent to Award the contract. After the Technical Proposals are evaluated and scored, the Cost Proposals will be opened and scored.

Cost Proposals may be evaluated and points awarded as follows:

- The Cost Proposals will be ranked from least to most expensive.
- The least expensive Cost Proposal shall receive the maximum number of point available.
- To determine the number of points to be awarded to all other Cost Proposals, the least expensive Cost Proposal will be used in all cases as the numerator. Each of the other Cost Proposals will be used as the denominator per the example below.
- The percentage will then be multiplied by the maximum number of available points and the resulting number will be the cost points awarded to other compliant Offerors. Percentages and point will be rounded to the nearest whole value. Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.

Example:

Offeror A quotes \$35,000, Offeror B quotes \$45,000 and Offeror C quotes \$65,000.

Respondent A: $\frac{\$35,000}{\$35,000}$ = receives 100% of available points on cost.

Respondent B: $\frac{\$35,000}{\$45,000}$ = receives 78% of available points on cost.

Respondent C: $\frac{\$35,000}{\$65,000}$ = receives 54% of available points on cost.

5. **BAFO.** A Best and Final Offer (BAFO) process might be appropriate under one of the following circumstances:
 - A submitted proposal (RFP) has a significant lower cost than the other proposals under consideration, yet it does not have the overall highest score.
 - The scores of two or more Offerors (RFP) are very close.

BAFO process might be appropriate under one of the following circumstances:

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- The evaluation committee shall decide if the BAFO option is appropriate and will determine who of the Offerors will receive an invitation to submit a BAFO (all Offerors may be invited). However, the Lead State should only invite Offerors who could potentially receive an award.
- The content of the BAFO solicitation may request additional information regarding important specifications such as levels of support, contract terms, implementation schedules, and/or costs.
- The BAFO solicitation cannot contain any material modifications to the initial solicitation or the evaluation criteria.
- The BAFO solicitation will follow the same requirements and process as an original solicitation: sealed proposals, specific timeframes, etc.
- Offerors who receive a BAFO solicitation are not required to submit a BAFO or they may simply respond with a written statement that their response remains as originally submitted.

The following is the scoring process for the BAFO:

- There should be no changes to the evaluation committee for an RFP
- The RFP contact should develop the scoring sheets based upon the additional information requested in the BAFO, and used by the evaluation committee
- Dependent upon the additional information requested in the BAFO, there may or may not be an independent scoring from the initial solicitation scoring.

Upon completion of the analysis by the evaluation committee, the award goes to the Offerors with the highest score.

6. **Multiple Awards.** The Lead State has the ability to award a contract to a single or multiple vendors. A Multiple Award Contract (MAC) is appropriate where there is more than one vendor for the same or comparable goods or services or may be necessary for operational purposes.

- B. After evaluations are completed, the Lead State and Multistate Sourcing Team will determine which proposals are most advantageous to the Lead State and potential Participating Entities and Purchasing Entities. In addition to other RFP requirements, to be deemed a responsive Proposal, the Technical Proposal must: obtain the minimum score for the Technical Proposal.

An addendum identifying the points assigned to the scoring criteria and identifying the minimum score for the Technical proposal will be posted prior to the RFP closing.

- C. Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to the NASPO ValuePoint Executive Council for approval of the proposed awards.
- D. Following approval of the NASPO ValuePoint Executive Council, the RFP Contact will post a public Notice of Intent to Award. The RFP Contact notifies all respondents of the outcome via email. The Notice of Intent will include a reference to the five-day appeal period.

Negotiating the Contract. After issuance of the Notice of Intent to Award, contract negotiations will commence with the successful Offerors. The Lead State may cancel the award if the parties fail to reach an agreement with a reasonable timeframe (typically 30 days) after the issuance of the Notice of Intent to Award. The RFP Contact may rescind the intent to award if the parties fail to reach an agreement. The RFP contact may then issue a new Notice of Intent to Award to the next Offeror in the evaluation sequence.



Attachment 1 RFP TERMS AND CONDITIONS

This RFP and Offeror's participation therein is subject to the following terms and conditions:

I. DEFINITIONS

- A. **Award** or **award** means the identification of Offerors eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation.
- B. **Authorized Dealer** means a dealer authorized by a manufacturer to sell products manufactured by the manufacturer.
- C. **Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
- D. **Contract Administrator** means person responsible for managing the contract on behalf of NASPO ValuePoint.
- E. **Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP **Cost Proposal**.
- F. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- G. **Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- H. **Lead State** means the State issuing this RFP.
- I. **Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.
- J. **Multiple Award Contract** means the RFP can be awarded to multiple Offerors.
- K. **Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.
- L. **NASPO** means the National Association of State Procurement Officials.
- M. **NASPO ValuePoint** means the cooperative contracting division of NASPO.
- N. **Offeror** means an entity submitting a proposal in response to this RFP.
- O. **Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
- P. **Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
- Q. **Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- R. **Proposal** or **proposal** means an Offeror's submission in response to this RFP, including information submitted directly through the RFP Website and information submitted after the RFP Close Date at the request of the Lead State.
- S. **Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
- T. **RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead State to the RFP Website, as amended.

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- U. RFP Close Date** means the date identified in Section **II.D.4** of the RFP Summary.
- V. RFP Contact** means the individual identified in Section **II.A** of the RFP Summary.
- W. RFP Open Date** means the date identified in Section **II.D.1** of the RFP Summary.
- X. RFP Q&A Deadline** means the date identified in Section **II.D.3** of the RFP Summary.
- Y. RFP Website** means the website identified in Section **II.B** of the RFP Summary.

II. GOVERNING LAW AND VENUE

- A.** This RFP and Offeror's participation in it is governed by and construed in accordance with the laws of the Lead State.
- B.** Unless otherwise specified in this RFP, the venue for any protest, claim, dispute, or action relating to this RFP, including evaluation and award, is in the state serving as the Lead State.
- C.** Any claim relating to this RFP brought in a federal forum must be brought and adjudicated solely and exclusively within the United States District Court for the Lead State.
- D.** Offeror and Offeror's participation in this this RFP must comply with all applicable federal, state, and local laws, rules, and policies.
- E.** All Deliverables proposed by Offeror must comply with all applicable federal, state, and local laws, rules, and policies.

III. RFP DOCUMENTS

A. RFP Website.

- 1. The RFP Website is the sole source for official RFP documents and updates. The Lead State may, but is under no obligation to, notify Offeror of updates to the RFP Website, including the posting of RFP amendments.
- 2. Documents from this RFP may be posted on multiple websites, including non-Lead State procurement solicitation boards and the NASPO ValuePoint website, or distributed through other channels, such as email. Such distribution is for advertising and informational purposes only, and documents and information from sources other than the RFP Website should not be relied upon to develop or submit a proposal. Proposals or questions submitted through any means other than those specified in this RFP will not be addressed or considered by the Lead State.

B. RFP Amendments.

- 1. The Lead State may, at any time and in its sole discretion, issue one or more amendments to this RFP. Information shared orally or in informal communications will not be considered an amendment unless explicitly stated in the communication or documented in writing on the RFP Website.
- 2. Offerors may, through the process described in this RFP for asking questions, propose amendments to the RFP, including adjustment of deadlines. The Lead State is not obligated to consider any proposed amendment.
- 3. The Lead State may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
- 4. The Lead State may make immaterial corrections or clarifications to the RFP.
- 5. Offeror is wholly responsible for reviewing amendments and updates to the RFP Website, acknowledging amendments as required, and submitting a proposal that is responsive to and compliant with the RFP as amended.

C. Waiver.

- 1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.

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2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.
3. The Lead State may waive minor irregularities or defects in an Offeror's proposal.

D. Conflicts and Issues.

1. The following should be brought to the attention of the Lead State using the process described in this RFP for asking questions or, if applicable, by filing a protest using the process described in Attachment 6, Protest Information:
 - a. Any alleged conflict among the materials composing this RFP; and
 - b. Any alleged issue relating to the content of this RFP, including instructions, requirements, or specifications alleged to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful.
2. Any protest, claim, dispute, or action based upon a conflict or issue described in 1.a or 1.b will be filed no later than the RFP Close Date. Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described in 1.a or 1.b if not filed by the RFP Close Date.

IV. PROPOSALS

- A. **Late Delivery or Non-delivery of Proposal.** Offeror is wholly responsible for ensuring Offeror's proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date.
- B. **Modified and Alternate Proposals.** Offeror is expected to submit Offeror's most favorable terms and pricing in its original proposal submitted by the RFP Close Date. The Lead State is under no obligation to provide Offeror an opportunity to modify or submit an addendum to Offeror's original proposal or to submit another proposal, including a best and final offer, prior to final evaluation and award. Alternate proposals will not be accepted unless otherwise specified in this RFP.
- C. **Discussions, Clarifications, and Demonstrations.** The Lead State may, but is not obligated to, enter into discussions with or request clarifications or demonstrations from one or more Offerors prior to awarding a Master Agreement. Offerors are expected to be ready to participate in discussions, clarifications, or demonstrations with limited notice. Discussions, clarifications, and demonstrations must be consistent with Offeror's original proposal and will become an addendum to Offeror's proposal.
- D. **Cost Proposal.**
 1. Offeror must complete all required elements of Attachment 9, Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
 2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
 3. Inclusion of cost or pricing information in any document other than the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
 4. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness by the Lead State. Submission of costs determined not to be reasonable by the Lead State may result in Offeror's proposal being rejected, regardless of the results of the Cost Proposal evaluation.

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E. Proposed Modifications to the Sample Master Agreement.

1. The Lead State may, but is not obligated to, consider proposed modifications to Attachment 4, Sample Master Agreement. Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.
2. Offeror-specific modifications to Attachment 4, Sample Master Agreement, may be proposed as part of Offeror's proposal in Attachment 10, Proposed Modifications to Sample Master Agreement, but are strongly discouraged. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.
3. The following will not be considered by the Lead State:
 - a. Any proposed modification not submitted with Offeror's proposal in Attachment 10, Proposed Modifications to Sample Master Agreement;
 - b. Any proposed modification not accompanied by an explanation as required in Attachment 10, Proposed Modifications to Sample Master Agreement;
 - c. Any proposed modification not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal; and
 - d. Any proposed modification merely referencing another document or a URL.
4. Offerors may propose additional terms but must include them in Attachment 10, Proposed Modifications to Sample Master Agreement and must clearly identify where any terms conflict with the Sample Master Agreement.
5. If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment 4, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.

F. Proposal Contact.

1. The Proposal Contact identified by Offeror in Attachment [7], Offeror Information, Acknowledgements, and Certifications must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact. Offeror is wholly responsible for ensuring communications received by Offeror's Proposal Contact are reviewed and addressed timely by the appropriate personnel.
2. The Lead State may, but is under no obligation to, notify Offeror's Proposal Contact of updates to the RFP Website, including the posting of RFP amendments. Offeror is wholly responsible for reviewing updates and submitting a proposal that is responsive to and compliant with the RFP as amended.

G. Proposal Development Costs. All costs incurred by Offeror in the preparation and submission of a proposal, including any costs incurred during discussions, clarifications, or demonstrations, are the responsibility of Offeror and will not be reimbursed.

H. Firm Offer. Offeror's proposal will act as a firm offer for 180 days following the RFP Close Date. After 180 days, the offer will remain open unless revoked by Offeror via written withdrawal of Offeror's proposal in accordance with the Lead State code 554.2205 Firm Offers.

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I. Ownership and Disclosure of Proposals.

1. Hard copy proposals and tangible items submitted by Offeror in connection with this RFP, including physical media and product samples, will become the property of the Lead State and may not be returned to Offeror.
2. Offeror grants Lead State and NASPO a perpetual, irrevocable, non-exclusive, royalty-free, and transferable right to display, modify, copy, and otherwise use the contents of Offeror's proposal, which may be:
 - a. Shared with NASPO members;
 - b. Shared with entities represented on the Multistate Sourcing Team;
 - c. Posted to the NASPO ValuePoint website following execution of Master Agreements for examination by potential Participating Entities and Purchasing Entities;
 - d. Subject to disclosure in accordance with applicable public information laws, rules, and policies; and
 - e. Subject to retention, archiving, and destruction in accordance with applicable retention laws, rules, and policies.
3. If Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment 11, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

- J. Confidential Information.** If Offeror is provided or given access to Confidential Information in connection with this RFP, Offeror will keep the Confidential Information in confidence and will not use the Confidential Information for any purpose other than as directed by the Lead State and as necessary to respond to this RFP. Unless otherwise directed by the Lead State, Offeror will destroy Confidential Information within 30 days of the cancellation of this RFP, rejection or withdrawal of the Offeror's proposal, or execution of a Master Agreement between the Lead State and Offeror.

V. RIGHTS RESERVED TO THE LEAD STATE

A. RFP Contact and Multistate Sourcing Team.

1. The Lead State may change the RFP Contact at any time. The Lead State will notify potential Offerors of the change via an amendment to this RFP, an email to the Offeror's Proposal Contact, or an update to the RFP Website.
2. The Lead State is not required to disclose the composition of the Multistate Sourcing Team and may, at any time and without notice, change the composition of the Multistate Sourcing Team, provided the composition complies with the Lead State's laws, rules, and policies.

- B. Rejection of Proposals.** The Lead State may reject Offeror's proposal at any time if the Lead State determines that:

1. The proposal is non-responsive;

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2. The proposal has failed to meet any mandatory requirement of the RFP, including any minimum scoring threshold;
3. Offeror is not responsible; or
4. Offeror has committed a violation of procurement law, rule, or policy.

C. Cancellation.

1. The Lead State may cancel this RFP at any time if the Lead State determines that cancellation is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Following cancellation, the Lead State may, at its discretion, re-issue this RFP or issue another RFP for the same or similar Deliverables.

D. No Exclusivity.

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.
2. The Lead State may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead State determines that:
 - a. There is insufficient competition among Contractors awarded a Master Agreement resulting from this RFP;
 - b. The quantity or diversity of Deliverables available through Master Agreements resulting from this RFP is insufficient to meet demand; or
 - c. Changes in the industry, market, or technology justify the solicitation of new or supplemental Contractors or Deliverables.

E. Mandatory State Preferences. The Lead State may apply mandatory evaluation preferences to proposals of eligible Offerors as set forth in applicable laws, rules, policies, or provisions of this RFP. Offeror is wholly responsible for demonstrating eligibility for any applicable preference in Offeror's proposal, including identification of applicable Business Certifications in Attachment 7, Offeror Information, Acknowledgements, and Certifications. Offerors that meet the requirements for award with an applied preference but would not receive an award without an applied preference may be awarded a contract for use by the Lead State but will not be awarded a NASPO ValuePoint Master Agreement for use by other states and eligible entities.

F. Conditional Awards.

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:
 - a. Approval by the NASPO ValuePoint Executive Council;
 - b. Approval by any individual or group of individuals required to approve Lead State contracts, such as legal counsel, an overseeing board, or agency head; and
 - c. Negotiation of Master Agreement terms, conditions, and pricing satisfactory to the Lead State, awarded Offeror, and NASPO ValuePoint.
2. Awards not approved by NASPO ValuePoint may, at the Lead State's option, result in a contract for use by the Lead State only.

G. Term. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement resulting from this RFP for the purpose of making the Master Agreement coterminous with others. If this RFP is a re-solicitation of an existing NASPO ValuePoint portfolio, the Lead State may, at its option, defer the effective date of Master Agreements resulting from this RFP to reduce or eliminate overlap in portfolio terms.

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VI. POTENTIAL PARTICIPATING ENTITIES

A. Interested States.

1. States that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested States in Attachment 5, Potential Participation. This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.
2. The Estimated Annual Volume in Attachment 5, Potential Participation aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.
3. Some Interested States have also provided state-specific terms and conditions that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. Any terms and conditions included in Attachment 5, Potential Participation are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

B. Potential Participation by Canadian Entities. In addition to potential Participating Entities within the United States, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use a Master Agreement resulting from this RFP, with the approval of the Contractor.

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Attachment 2 SCOPE OF WORK

This Scope of Work describes the Deliverables being sought through this RFP and the scope of what Contractors will be expected to offer through a Master Agreement resulting from this RFP. The Scope of Work is intended to provide interested Offerors with sufficient basic information to submit a Proposal. It is not intended to limit a Proposal's content or exclude any relevant or essential data.

I. Master Agreement Objectives

The purpose of this RFP is to establish a Master Agreement(s) with qualified Offerors to provide competitive pricing for tire products and services through their retail distribution networks to all Participating States. The Lead State is requesting proposals for Tires, Tubes, and Service in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. This RFP is a replacement for the current NASPO contracts that shall expire on March 31, 2024.

This RFP is designed to provide interested Offerors with sufficient information to submit Proposals meeting the requirements. It is not intended to be comprehensive. Each Offeror is responsible for determining all factors necessary for submission of a comprehensive Proposal. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

The objective of the RFP is to obtain best value, and in some cases, achieve more favorable pricing than is obtainable by an individual state and local government entities.

The Master Agreement(s) resulting from this RFP may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the using entities chief procurement official and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be three (3) years with three (3) annual extensions.

II. Master Agreement Deliverables

The scope of this RFP includes specific full lines of tires and tubes as covered in the Manufacturer's Price List (MPL) and related services in the subcategories listed below.

A. Tires and Tubes Subcategories

1. Pursuit and Performance Tires
2. Automobile/Passenger Vehicles
3. Light Duty Trucks: Radial and Bias
4. Medium Commercial/Heavy Duty Trucks/Buses
5. Off-the-Road OTR: Radial and Bias
6. Agriculture/Farm
7. Industrial
8. Specialty Tires
9. EV Tires
10. Retread

B. Product and Service Specifications

1. General Tire Specifications

The quality for all tires shall be the equivalent or greater than Original Equipment Manufacturers (OEM) as original for automobiles, trucks, tractors, buses, backhoes,

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loaders, motor graders, and other heavy equipment. Tires supplied shall be marked with Federal Department of Transportation (DOT) compliance symbol. Tires shall conform to all applicable Federal Specifications.

All tires in subcategories one (1) through nine (9) shall be new, unused and shall have been produced or manufacturer within the last one (1) year prior to delivery to the purchasing Entity. Should an Authorized Dealer deliver a tire(s) with a manufacturing date exceeding the one (1) year limit, the Authorized Dealer shall pick up the expired tire(s) and replace them with tire(s) that meet the manufacturing date requirement for no additional fee to the Purchasing Entity.

All tires shall have the size, manufacturer's name, DOT number, serial number, and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. shall not be acceptable.

Tires offered shall have been tested to meet or exceed American Society of Testing and Materials (ASTM) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operations performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers.

a. Pursuit and Performance Tires

Pursuit and performance tires include tires for police and other pursuit vehicles and for other high-speed, performance vehicles. This subcategory includes any tire that is H, V, W, Y, or ZR rated or above. An H rating is the minimum speed rating for tires in this subcategory.

Tires shall be new, standard production tires expressly designed and certified by manufacturer for high speed operation and shall exhibit exceptional safety, stability, handling, and stopping characteristics. Offeror shall maintain evidence/certifications that such tires meet all laboratory test and size requirements of Federal Standards MVSS 109.

b. Automobile/Passenger Vehicles

These tires include common passenger car tires and are designated with a "P" at the beginning of the tire size. Common applications for these types of tires would be passenger cars and minivans.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

c. Light Duty Trucks Radial and Bias

These tires can usually be identified by the letters "LT" at the beginning of the tire size. Common applications for these types of tires would be pickup trucks, sport utility vehicles, full size vans, and some trailers.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

d. Medium Commercial/Heavy Duty Trucks/Buses

These tires do not have a letter at the beginning of the tire size. Common applications for these types of tires would be medium and heavy trucks, buses,

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semi-trucks, cargo, vans, and trailer tires. Tires in this subcategory have a diameter that is equal to or greater than twenty (20) inches.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

e. Off-the-Road OTR and Low Speed Off Highway Tires (Radial and Bias)

Common applications are heavy construction equipment such as wheel loaders, backhoes, graders, and trenchers.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

f. Agricultural/Farm (Radial and Bias)

Common applications are farm tractors, wagons, harvesters, and other farm implements requiring tires with high traction qualities and tires with high flotation qualities at low inflation pressures.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

g. Industrial

Common applications are specialty industrial equipment, some construction equipment, and material handling equipment such as skid loaders and forklifts and include pneumatic, nonpneumatic, and press on tires.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

h. Specialty Tires

Specialty tires may include, but are not limited to, recreational, all-terrain-vehicle (ATV), boat trailer, yard and garden, and aviation tires. This category also includes all other tires not identified above.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

i. Electric Vehicle (EV) Tires

Common applications are electric sedans and trucks requiring tires with high load index.

Tires shall be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

j. Retread Tires – Optional Service

A retread tire undergoes a manufacturing process to replace the worn tread on used tires to extend the longevity of the tire.

2. Low Roll Resistance Tires

Because of average fuel economy standards, the auto industry generally equips new vehicles with tires that have significantly lower rolling resistance and better fuel economy than the average replacement tire. Replacement tires do not have to meet original equipment fuel efficiency standards as there is very little information regarding their rolling resistance and their relative fuel economy characteristics.

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In the interests of maintaining fuel economy in fleet vehicles, NASPO ValuePoint Participating Entities would like to contract with manufacturers that offer certified low rolling resistance tires. Offeror is to identify in the Proposal whether or not it offers these types of tires and, if so, include them on their MPL and identified them as low roll resistance tires. Offeror is to also offer the fuel economy rating of the tires offered; e.g. miles per gallon fuel efficiency increase or percentage of fuel economy increase.

3. Tubes

All inner tubes shall be standard production first line, heavy duty butyl tubes or natural rubber of fresh stock. All tubes shall be of quality not less than the tubes normally furnished in representative quantities by OEM as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tubes shall conform to all applicable federal specifications. All tubes shall be new and shall have been produced or manufactured within the last one (1) year prior to installation or delivery to the purchasing Entity.

4. Detailed Services Specifications

Offeror is asked to provide pricing on each of the below mentioned listed services that may be performed by their approved Authorized Dealers to include any parts and labor as a total in its Cost Proposal. If an Offeror does not offer one of the items listed below, the Offeror should mark it as NA. Approved Authorized Dealers shall honor the services pricing in the Offeror's Cost Proposal.

Offeror is asked to provide a list of its approved Authorized Dealers for each state it is including in its Proposal. If awarded a Contract, the successful Offeror(s) are responsible for the timeliness and quality of all services provided by the approved Distributors under this RFP. NASPO ValuePoint Participating States may elect to use these services listed below at their discretion.

Product installation and repairs, such as mounting, rotation, and balancing, shall be in accordance with manufacturer's recommended procedures of warranted new virgin-product tires for each product subcategory.

- a. Tire installation with purchase in store includes dismount of used tires and tubes
- b. Change tire, dismount and mount
- c. Flat repair, remove, repair and mount
- d. Flat repair, off vehicle
- e. Rotate mounted tires (per tire)
- f. New valve stem rubber or metal
- g. Wheel balance – computer spin balance (per spin)
- h. Wheel balance – computer spin balance and valve stem combination
- i. Foam filled
- j. Alignment Services – If Offeror provides this service, the prices should be listed in the Cost Proposal as a percentage discount from list price for parts and a fixed price per hour for labor.

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- k. Studding – Metal implants in the surface of the tread to improve traction on ice.
- l. Siping – The small slots that are cut or molded into a tire tread surface. These slots are meant to aid in increasing traction in snow, ice, mud, and wet road surfaces.
- m. Used tire recycle and disposal fee (per tire) – Some NASPO ValuePoint Participating States have statutes that only allow up to a specific fee to be charged. The Participating States with statute regulated fee caps will only pay the proposed amount or the statute price, whichever is lower.
- n. Bulk Disposal of Tires (Optional Service) – This is considered an additional chargeable service that will be excluded from the Technical Proposal criteria and scoring, but may be utilized for Contract pricing. Failure to bid on this optional service shall not affect an award.

If the Offeror proposes a cost for this service and is awarded a Contract, that Offeror shall, when requested, place trailers on-site at any requesting using Entity for the disposal of scrap tires. Offeror shall, on a will-call basis, within five (5) days' notification from requesting Purchasing Entity, remove and replace full trailers with empty trailers. Trailer capacity shall be a minimum of six (6) tons or scrap tires. Offeror shall dispose of scrap tires that are removed in Offeror provided trailers at an approved waste tire recovery area, other approved disposal methods. Offeror shall invoice for disposal of scrap tires at the established Master Agreement price per ton. Offeror shall submit with invoice, documentation of scrap tire disposal weight from a disposal site, if this is the method of disposal utilized by the Offeror. Offeror may return scrap tires mounted to wheels to Purchasing Entity if dismounting is required. With prior approval from the designated Purchasing Entity contract representative, Offeror may dismount scrap tires from wheels and invoice at the established Master Agreement price for such service. Offeror shall return wheels to purchasing Entity for disposition unless instructed otherwise by purchasing Entity.

- o. Tire Pressure Monitoring System (TPMS) – Vehicles all come with a TPMS which is built into the tire valve. When new tires are mounted on a vehicle with the TPMS system, the TPMS system is reinstalled with a new washer, valve, and valve cap (TPMS service kit).

C. Customer Service

1. The Offeror shall provide a website dedicated to any Participating State that includes, but, is not limited to, services, cost, technical specifications, online ordering, and payment capability.
2. The Offeror shall provide a dedicated customer service representative(s) for the Master Agreement. The representative shall be available to respond to all Participating Entity inquiries within two (2) business day. The representative shall be available to resolve any customer service issues.
3. The Offeror shall report Key Performance Indicators (KPIs) measuring their customer service and response time. The KPI report shall be issued to the RFP Contract Administrator no later than sixty (60) days following the end of each calendar year.

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4. A Contractor representative(s) shall attend an annual meeting with the Lead State Contract Administrator and sourcing team to review usage and discuss any issues that are occurring, if requested. The Contractor shall be prepared to discuss overall effectiveness of contract, total sales, and customer service. The representative shall be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required.

D. Multi-Accounts within a Using Entity

Using Entities may have different agencies, departments, or divisions utilizing the goods and/or services provided by Offeror(s). Therefore, Offeror(s) shall be able to process multiple individual accounts and unique users within a Purchasing Entity.

E. Payment Types

Offeror shall accept mailed and electronic payments/P-Cards and cannot charge additional transaction fees under this Master Agreement. Offeror shall state in its Cost Proposal whether it offers any payment discounts. Offeror shall accept each Participating Entity's payment terms established in their Participating Addendum.

F. Recruiting and Education of Approved Distributors

Offeror shall agree to continue recruiting dealers to become Approved Distributors for Participating Entities for the duration of the Master Agreement. Offeror shall further agree to continue outreach with regards to the training of Approved Distributors on the terms and requirements of the Master Agreement and relaying billing procedures for each respective Participating Entity.

III. Contractor Responsibilities and Tasks

A. Administrative Fees

1. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes and shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with the proposal.
2. Additionally, some Participating Entities may require an additional administrative fee be paid directly to the state only on purchases made within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments shall be incorporated into the Participating Addendum that is made part of this Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for such purchased made by Purchasing Entities within the jurisdiction of the state. All such payments shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee shall be based on the gross amount of all sales (less any charges for taxes and shipping) at the adjusted prices (if any) in Participating Addenda.

B. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports.

1. Summary Sales Data – The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at: <https://calculator.naspovaluepoint.org/>

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2. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating State. Plans shall include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
3. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Participating Entities proposed terms and conditions, as deemed important to the Participating Entity, for possible inclusion into the Participating Addendum. Contractor shall ensure that their sales force is aware of this contracting option.
4. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of t of administrative fees.

C. Price and Rate Guarantee Period

All prices and rates shall be guaranteed for the initial six (6) month period of the Master Agreement. Following the initial six (6) month period of the Master Agreement, the Contractor may request for a price or rate adjustment for an equal guarantee period of six (6) months, and shall be made at least sixty (60) days prior to the effective date. Requests for price or rate adjustment shall include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rate shall be allowed.

IV. Lead State Responsibilities and Tasks

A. Adjustment in Pricing

The Lead State Contract Administrator and Multistate Sourcing Team shall review the Offerors request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead State RFP Contact shall notify the Offeror their requested price or rate adjustment was approved or shall be resubmitted for approval at least thirty (30) days prior to the effective date.

B. Contract Extensions

The Lead State Contract Administrator shall give the Contractor written notice of its intent whether to exercise each renewal option no later than ninety (90) days before the end of the Contract's then-current term.

C. Annual Review Meeting

The Lead State Contract Administrator shall coordinate a date and time that aligns with the Contractor, Contract Administrator, and Multistate Sourcing Teams schedule for the annual review meeting. The meeting shall be held in Des Moines, Iowa.

D. Participating Addendum Escalation Contact

The Lead State Contract Administrator shall be the escalation contact for a Participating Entity when the Contractor fails to respond to correspondence with the Participating Entity or if an issue or problem is not resolved in a timely fashion.

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Attachment 3 RFP EVALUATION PLAN

Stage 1: Initial Responsiveness. Proposals will be reviewed for completeness and initial responsiveness. Proposals omitting required documents or responses may be rejected in accordance with Attachment 1, RFP Terms and Conditions.

Stage 2: Mandatory Minimum Requirements. Complete and responsive proposals will be reviewed for compliance with the following Mandatory Minimum Requirements:

Criteria	Evaluation	Result
Tires and Tubes Subcategories	Pass/fail	
Product and Service Specifications	Pass/fail	
Customer Service	Pass/fail	
Multi-Accounts within a Using Entity	Pass/fail	
Payment Types	Pass/fail	
Recruiting and Education of Approved Distributors	Pass/fail	
Stage 2 Result:		

Proposals failing to meet or exceed all Mandatory Minimum Requirements may be rejected in accordance with Attachment 1, RFP Terms and Conditions.

Stage 3: Technical Criteria. Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the following Technical Criteria:

Criteria	Points Possible	Offeror's Points Earned
Offeror's Experience, Background, References, Personnel	X	
Ability to Meet the Scope of Work	X	
Service Area & Availability of Products	X	
Education & Compliance of Approved Distributors	X	
Customer Service	X	
Emergency Response & Roadside Assistance	X	
Marketing NASPO	X	
Green Initiative	X	
Stage 3 Total:	700	

Criteria points possible value shall be posted on September 6, 2023 at 2:00 P.M.

Offerors earning a minimum of 400 points will move on to the cost evaluation. The proposal of any Offeror not earning the minimum of 400 points will be rejected.

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Stage 4: Cost. Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated and the contents of Attachment 9, Cost Proposal will be scored as follows:

PROPOSED COSTS

Market Basket	Subcategory	Offeror's Cost	Points Possible	Offeror's Points Earned
Pursuit and Performance Tires	B1		75	
Automobile/Passenger Tires	B2		75	
Light Duty Trucks	B3		75	
Medium Commercial/Heavy Duty Trucks/Buses	B4		75	
Total:			300	

In the Cost Evaluation there are 75 points available for each subcategory. The proposed tire cost for the subcategory shall be compared against the other Offeror's tire cost to the subcategory.

The formula for calculating cost points earned for Proposed Costs is **Lowest Cost / Offeror's Cost x 75 Points Possible**.

Total cost points for Proposed Costs will be normalized to a 300 -point scale.

Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.

EVALUATION SUMMARY

Stage	Points Possible	Offeror's Points Earned
Technical Criteria Evaluation	700	
Cost Evaluation	300	
Total:	1000	

AWARD SELECTION

The Lead State and Multistate Sourcing Team will then determine which proposals are most advantageous to the Lead State and potential Participating and Purchasing Entities. The Lead State will award the Contract(s) to the Responsible Offeror(s) whose Responsive Proposal the agency believes will provide the best value to the Lead State and NASPO ValuePoint.

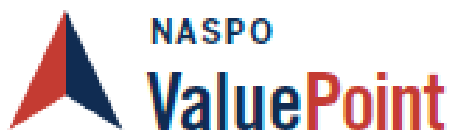
Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to the NASPO ValuePoint Executive Council for approval of the proposed awards.

Following approval of the NASPO ValuePoint Executive Council, Notice of Intent to Award the Contract(s) will be sent to all Offerors submitting a timely Proposal. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by Lead State. If the successful Offeror fails to negotiate and deliver an executed Contract by that date, the Lead State, in its sole discretion, may cancel the award and award the Contract to the remaining Offerors the Lead State believes will provide the best value to the Lead State and NASPO ValuePoint.



ATTACHMENT 4

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS



I. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

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- 1.12 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for three (3) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Pricing, Payment & Leasing

- 3.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
 - 3.1.1** All prices and rates must be guaranteed for the initial six (6) month term of the Master Agreement.
 - 3.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least six (6) months prior to the effective date.
 - 3.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
 - 3.1.4** No retroactive adjustments to prices or rates will be allowed.
- 3.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within sixty (60) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After sixty (60) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 3.3 Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for

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leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

IV. Ordering

- 4.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 4.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 4.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 4.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 4.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
 - 4.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
 - 4.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
 - 4.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
 - 4.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
 - 4.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 4.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
 - 4.6.1** The services or supplies being delivered;
 - 4.6.2** A shipping address and other delivery requirements, if any;
 - 4.6.3** A billing address;
 - 4.6.4** Purchasing Entity contact information;

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- 4.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 4.6.6** A not-to-exceed total for the products or services being ordered; and
 - 4.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 4.7 Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 4.8 Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

V. Order of Precedence

- 5.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 5.1.1** A Participating Entity's Participating Addendum ("PA");
 - 5.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 5.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 5.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 5.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 5.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 5.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

VI. Participants and Scope

- 6.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 6.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or,

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- with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.
- 6.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 6.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 6.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 6.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 6.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 6.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 6.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 6.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

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VII. NASPO ValuePoint Provisions

7.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

7.2 Administrative Fees

7.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

7.2.2 State Imposed Fees. Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

7.3 NASPO ValuePoint Summary and Detailed Usage Reports

7.3.1 Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

7.3.2 Summary Sales Data. "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

7.3.3 Detailed Sales Data. "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

7.3.4 Sales Data Crosswalks. Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes

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thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor's part number or SKU for each Product in Offeror's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change.

7.3.5 Executive Summary. Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

7.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

7.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

7.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

7.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

7.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

7.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

7.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two

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years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

- 7.6 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.
- 7.7 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

VIII. Shipping and Delivery

- 8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.
- 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times,

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to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

9.4 **Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

9.5 **Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

10.1 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

10.2 **Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

10.3 **Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be

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inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

10.4 Rights Reserved. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

10.5 Warranty Period Start Date. The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

11.3 License of Pre-Existing Intellectual Property. Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

12.1 General Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

12.2 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

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12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 Term. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 Class. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 Coverage. Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;

13.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

13.4 Notice of Cancellation. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

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- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 14.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 14.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 14.2.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.
 - 14.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

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- 14.2.1.2** Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.
- 14.2.1.3** Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- 14.2.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.
- 14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
- 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
- 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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- 14.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.
- 14.2.6 Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.
- 14.3 Assignment/Subcontracts**
- 14.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- 14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.
- 14.4 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.
- 14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.
- 14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
- 14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 14.8 Defaults and Remedies**

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- 14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.8.1.1** Nonperformance of contractual requirements;
 - 14.8.1.2** A material breach of any term or condition of this Master Agreement;
 - 14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
 - 14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - 14.8.1.5** Any default specified in another section of this Master Agreement.
- 14.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- 14.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
- 14.8.3.1** Any remedy provided by law;
 - 14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.8.3.5** Suspension of Contractor's performance; and
 - 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master

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Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

14.13 Assignment of Antitrust Rights. Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be

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amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

- 14.14 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

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Attachment 5 POTENTIAL PARTICIPATION

Historical Usage

The following table identifies total sales reported by Tires, Tubes & Service contractors through NASPO ValuePoint Master Agreements over the past six (6) calendar years.

Year	Reported Historical Sales Volume
2017	\$225,592,953.64
2018	\$200,844,522.10
2019	\$166,783,460.92
2020	\$180,750,302.61
2021	\$204,477,870.52
2022	\$235,962,604.54

No minimum or maximum level of sales volume is guaranteed or implied.

Interested States

The states below have requested to be named in this RFP as potential participants in the resulting Master Agreement(s). This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.

Interested States	Reported Estimated Annual Volume	Sample Participating Addendum Terms and Conditions
Alaska	\$330,000	N/A
Arizona	\$7,000,000	Exhibit A
Connecticut	\$1,500,000	Exhibit B
Delaware	\$1,000,000	N/A
Florida	\$23,000,000	N/A
Hawaii	\$840,000	Exhibit C
Illinois	N/A	Exhibit D
Iowa	\$4,000,000	N/A
Louisiana	\$10,000,000	N/A
Maine	\$250,000	N/A
Missouri	\$6,500,000	N/A
Nevada	\$350,000	N/A
New Mexico	\$5,000,000	Exhibit E
New York	\$15,000,000	N/A
Oregon	\$10,000,000	N/A
Rhode Island	\$13,000	Exhibit F
South Dakota	\$3,000,000	N/A
Tennessee	\$2,750,000	Exhibit G
Utah	\$18,600,000	Exhibit H
Virginia	\$10,600,000	Exhibit I
Vermont	\$3,000,000	Exhibit J
Washington	\$8,800,000	Exhibit K
Wyoming	N/A	N/A

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TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: \$131,533,000.00

The Estimated Annual Volume above aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.

Some Interested States have also provided state-specific terms and conditions, included in this attachment, that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. These terms and conditions are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Uniform Terms and Conditions
Version 10.4

1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1. "Attachment" means any item the Solicitation which requires the Offeror to submit as part of the Offer.
 - 1.2. "Contract" means the combination of the Solicitation, including the Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4. "Contractor" means any person who has a Contract with the State.
 - 1.5. "Data" means recorded information, regardless of form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
 - 1.6. "Days" means calendar days unless otherwise specified.
 - 1.7. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
 - 1.8. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.9. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.10. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.11. "Services" means the furnishing of labor, time or effort by a Contractor or Subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

- 1.12. "State" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
- 1.13. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.14. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials or any Services required for the performance of the Contract.
- 1.15. "Subcontractor" means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 23.1. Special Terms and Conditions;
 - 23.2. Uniform Terms and Conditions;
 - 23.3. Statement or Scope of Work;
 - 23.4. Specifications;
 - 23.5. Attachments;
 - 23.6. Exhibits; then
 - 23.7. Any other documents referenced or included in the Solicitation including, but not limited to, any Bid or Offer documents provided by the Contractor that do not fall into one of the above categories.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no

usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act. Contractor shall include these provisions in contracts with Subcontractors when required by Federal or State law.
- 3.3. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or Materials covered under this Contract as required under A.R.S. § 41-2547. The State shall also have the right to test, at its own cost, the Materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State's eProcurement system. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Continuous Improvement. Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. Other Contractors. State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State's or other suppliers' performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. Ownership of Intellectual Property
- 3.9.1. Rights In Work Product. All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- 3.9.2. "Government Purpose Rights" are:
- 3.9.2.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- 3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and
- 3.9.2.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal

government, the governments of other states, and various local governments.

- 3.9.3. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.
- 3.9.4. Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.
- 3.9.5. Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:
- 3.9.5.1. any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;
 - 3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and
 - 3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.
- 3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.
- 3.10. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.11. Federal Immigration and Nationality Act. Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, Contractor shall flow down this requirement to all Subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State

determine that the Contractor or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default and suspension or debarment of the contractor.

3.12. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.

3.13. Offshore Performance of Work involving Data is Prohibited. Any Services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to Data shall be performed within the defined territories of the United States.

3.14. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.

3.15. Certifications Required by State Law.

3.15.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.

3.15.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. ("free on board") Destination and shall include all freight delivery and unloading at the destination.

4.3. Firm, Fixed Price. Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.

4.4. Applicable Taxes

4.4.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

- 4.4.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.4.3. Tax Indemnification. Contractor and all Subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.4.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.5. Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current State Fiscal Year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current State Fiscal Year until funds are made available for performance of this Contract.
- 4.6. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these Materials or Services are not funded, the State may take any of the following actions:
- 4.6.1. Accept a decrease in price offered by the Contractor;
- 4.6.2. Cancel the Contract; or
- 4.6.3. Cancel the Contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of Services or Materials, the revision of payment terms, or the substitution of Services or Materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer as described in Arizona State Procurement Office Standard

Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss. The Contractor shall bear all loss of conforming Materials covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming Materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

621. Contractor/Vendor Indemnification (Not Public Agency). To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or Subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

622. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnatee') from and

against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of Materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this paragraph shall not apply.

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither the Contractor nor State shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment, Materials, or Services caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either the Contractor or State is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working

day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or Services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in the Special Terms and Conditions, the Contractor warrants that, for one (1) year after acceptance by the State of the Materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the Materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged, and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Conformity to Requirements.

7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:

7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;

- 7.3.1.2. Be free from defects of material and workmanship;
 - 7.3.1.3. Conform to or perform in a manner consistent with current industry standards; and
 - 7.3.1.4. Be fit for the intended purpose or use described in the Contract.
- 7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.
- 7.4. Inspection/Testing. The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.
- 7.5. Contractor Personnel. Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.
- 7.6. Compliance With Applicable Laws. The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.
- 7.7. Intellectual Property. Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.8. Licenses and Permits. Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. Operational Continuity. Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter

any of Contractor's duties hereunder absent a consented delegation under paragraph 5.3 [Assignment and Delegation] that expressly recognizes the event.

7.10. Performance in Public Health Emergency. Contractor warrants that it will:

7.10.1. Have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:

7.10.1.1. Identification of response personnel by name;

7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and

7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.

7.10.2. Provide a copy of its current plan to State within three (3) business days after State's written request. If Contractor claims relief under paragraph 6.4 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.

7.11. Lobbying

7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

- 7.11.2. Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.
- 7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.
- 7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- 7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.
- 7.15. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.
- 7.15.2. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12- 529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.15.3. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

821. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

822. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or Services supplied under this Contract shall fully comply with the Contract. The delivery of Materials or Services or a portion of the Materials or Services that do not fully comply constitutes a breach of contract. On delivery of nonconforming Materials or Services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further

obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State with the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, Data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and Materials or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.
- 9.5. Termination for Default.
- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

952. Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

953. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring Materials or Services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (A.R.S. Title 41).

Participating Addendum

NASPO ValuePoint Cooperative Purchasing, Master Agreement Administered by the state of Iowa,

Master Agreement # _____

Connecticut Department of Administrative Services, procurement division contract #23PSX0024

1. Scope

This Participating Addendum allows for the purchase of Tires, Tubes, and Services, led by the state of Iowa ("Lead State") along with a multi-state sourcing team for use by state of Connecticut agencies and political subdivisions and institutions in accordance with Conn. Gen. Stat. §4a-53.

The state of Connecticut, Department of Administrative Services ("Participating Entity") will identify this Participating Addendum as the state of Connecticut ("State"), Department of Administrative Services ("DAS"), Procurement Division Contract # 23PSX0024.

2. Participation

The National Association of State Procurement Officials ("NASPO") is the Cooperative Purchasing Organization, LLC doing business as NASPO ValuePoint. Use of specific NASPO ValuePoint cooperative contracts by State agencies, political subdivisions and other entities (including cooperatives) authorized by the State's statutes to use State contracts are subject to the prior approval of the State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Each using State agency, political subdivision and institution in accordance with Conn. Gen. Stat. §4a-53 ("Purchasing Entity") that purchases under the NASPO ValuePoint Master Agreement Number «[Master Agreement Number](#)» as executed by the Lead State and «[Contractor Name](#)» ("Contractor") ("Master Agreement") will be treated as an individual customer(s). Except to the extent modified by this Participating Addendum, each Purchasing Entity will be responsible to follow the terms and conditions of the Master Agreement and will have the same rights and responsibilities for purchases as the Lead State has in the Master Agreement. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities.

This Participating Addendum is effective upon the date it is signed by the last party below ("Effective Date").

3. Order of Precedence

- a. This Participating Addendum. The Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the terms of the Master Agreement;
- b. Master Agreement (including negotiated terms and conditions);
- c. The Solicitation including all Addendums; and
- d. Contractor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State in writing and attached to the Master Agreement. No other terms and conditions apply. The Solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Primary Contacts

The primary contact individuals for this Participating Addendum are as follows (or their named successors):

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Lead State:

Name: State of Iowa
Address: «[Lead State Address](#)»
Contact Person: «[Lead State Contact Person](#)»
Telephone: «[Lead State Phone Number](#)»
E-mail: «[Lead State Email Address](#)»

Contractor:

Name: «[Contractor Name](#)»
Address: «[Contractor Address](#)»
Contact Person: «[Contractor Contact Person](#)»
Telephone: «[Contractor Phone Number](#)»
E-mail: «[Contractor Email Address](#)»

Participating Entity:

Name: State of Connecticut, Department of Administrative Services,
Procurement Division
Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103
Contact Person: Marisol Rivera
Telephone: 860-713-5435
E-mail: Marisol Rivera

5. Orders

Any order placed by a Purchasing Entity through the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties of the order agree in writing that another contract or agreement applies to such order.

All purchase orders shall contain the Master Agreement No. «[NASPO ValuePoint Master Agreement Number TX](#)» and the DAS Contract No. 23PSX0024.

6. Participating Entity Modifications or Additions to Master Agreement

6.1 Definitions

The following definitions apply to this Participating Addendum:

a. Business Day

A day of the week recognized by the Client Agency as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

b. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

c. Client Agency

Any Purchasing Entity, department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State, non-profit organization organized in the State and any entity identified in Conn. Gen. Stat. Sec. 4a-

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54, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms of this Contract.

d. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

e. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

f. Contract

This Participating Addendum and the Master Agreement.

g. Contractor Parties

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

h. Deliverable

Each (1) Good, Service, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

i. Reserved

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j. Goods or Services

Goods, Services or both, as specified in the Master Agreement.

k. Reserved

l. Reserved

m. Reserved

n. Perform

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word "Perform" includes all parts of speech.

o. Purchase Order

A written or electronic document that the Client Agency issues for one or more Deliverables in accordance with the terms of this Contract.

p. Records

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

q. Services

The labor or work, necessary or appropriate for the Contractor to Perform.

r. Reserved

s. Statement of Work ("SOW")

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

t. Reserved

u. Term

The original term of this Contract plus any extensions exercised under this Contract.

v. Termination

An end to this Contract prior to the end of its Term.

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6.2 Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

6.3 Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

6.4 Sovereign Immunity

The parties acknowledge and agree that nothing in this Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.

6.5 Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state

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ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

6.6 Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

6.7 Executive Orders and Other Enactments

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to this Contract at any time during its Term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.
- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

6.8 Nondiscrimination

- a. For purposes of this Section, the following terms are defined as follows:
 1. "Commission" means the Commission on Human Rights and Opportunities;
 2. "Contract" and "contract" include any extension or modification of the Contract or contract;
 3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
 4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-

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related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;

5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding

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and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the

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employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box:

6.9 Indemnification

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the

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Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.

- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract. Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to DAS prior to the Effective Date of this Contract. Contractor shall not begin Performance until the delivery of the policy to DAS. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Client Agency or the State was contributorily negligent.
- f. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

6.10 Tangible Personal Property

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
 - 1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 - 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - 3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 - 4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 - 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.
- b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in section 12-1 of the Connecticut General Statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its

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own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

6.11 Representations and Warranties Regarding Motor Vehicles

If in the course of Performance or in any other way related to this Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

- a. it is the owner of record or lessee of record of each such motor vehicle used in the Performance of this Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- b. each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of this Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- c. each Contractor Party who uses or operates a motor vehicle at any time in the Performance of this Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- d. each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall

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comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

6.12 Audit and Inspection of Plants, Places of Business and Records

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.
- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.
- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

6.13 Protection of Confidential Information

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards

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contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 3. A process for reviewing policies and security measures at least annually;
 4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
 5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.
- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

6.14 Audit Requirements for Recipients of State Financial Assistance

For purposes of this paragraph, the word "Contractor" shall be deemed to mean "nonstate entity," as that term is defined in section 4-230 of the Connecticut General Statutes. The Contractor shall provide for an annual financial audit acceptable to the Client Agency for any expenditure of State awarded funds made

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by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor shall comply with federal and State single audit standards as applicable.

6.15 Lead State Terms that Do Not Apply to the State

The parties hereby agree that any provision in the Master Agreement and any of its Exhibits, shall not apply to the State, the Participating Entity or any of the Purchasing Entities if the provision violates sovereign immunity or conflicts with this Participating Addendum. Further, the parties agree that in any instance where a provision requires the State to indemnify the Contractor or that the parties are bound by binding arbitration, constitutes a violation of sovereign immunity, and therefore is not applicable.

6.16 Reserved

6.17 Reserved

6.18 Reserved

6.19 Reserved

6.20 Reserved

6.21 Reserved

6.22 Reserved

6.23 Reserved

6.24 Reserved

6.25 Data: Access

Access to Contract and State Data.

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning this Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

6.26 P-Card (Purchasing Credit Card)

Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.

Contractor shall be equipped to receive orders issued by the Purchasing Entities using the P-Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with

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P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Purchasing Entity or rendering of Services.

The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.

Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

6.27 Reserved

6.28 Iran Energy Investment Certification

- a. Pursuant to Conn. Gen. Stat. § 4-252a, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this Section then the Contractor shall not be deemed to be in breach of this Contract or in violation of this Section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the state of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State or quasi-public agency to pursue a breach of contract action for any violation of the provisions of this Contract.

6.29 Large State Contract Representation for Contractor

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- a. That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- b. That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and

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- c. That the Contractor is submitting bids or proposals without fraud or collusion with any person.

6.30 Large State Contract Representation for Official or Employee of State Agency

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

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6.31 Consulting Agreements Representation

Pursuant to Conn. Gen. Stat. § 4a-81, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Conn. Gen. Stat. § 53a-157b, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Conn. Gen. Stat. §4a-81.

Consultant's Name and Title

Name of Firm (if applicable)

Start Date

End Date

Cost

The basic terms of the consulting agreement are:

Description of services provided:

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES:

Name of Former State Agency

Termination Date of Employment

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IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating Entity: State of Connecticut Department of Administrative Services Procurement Division	Contractor: « Contractor Name »
By: (Signature on document in procurement files)	By: (Signature on document in procurement files)
Name: Marisol Rivera»	Name:
Title: Contract Specialist	Title:
Date:	Date:

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

Cooperative Participation

State of Illinois Specific Terms and Conditions

1. This participating agreement executed by the State of Illinois may be designated as available to all or certain governmental units and/or qualifying not for profit agencies. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any participating agreement, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This participating agreement and all related public records maintained by, provided to, or required to be provided to the State, are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any participating agreement executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any participating agreement, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any participating agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any participating agreement. The State of Illinois does not waive sovereign immunity.
6. Illinois may further evaluate the lead entity's awarded contracts to make best value determinations.
7. Registration in the Illinois Procurement Gateway is required before a participating agreement with the State of Illinois may be executed. For information on registration, please visit www.ipg.vendorreg.com.
8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy [Vendor Registration Manual](#).
9. Any vendor with a participating agreement may be required to meet an Illinois Business Enterprise Program goal (30 ILCS 575/).
10. Any vendor with a participating agreement may be required to meet a contracting goal with Illinois small businesses (30 ILCS 500/45-90).

State of New Mexico Terms and Conditions

1. **Taxes:** The Contractor shall be reimbursed by the Participating State for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE: NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE PARTICIPATING STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Participating State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

2. **Retainage:**

Reserved

3. **Performance Bond:**

Reserved

4. **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE NEW MEXICO STATE PURCHASING AGENT. This Agreement shall begin on the date approved by the New Mexico State Purchasing Agent and end on **DATE**. The Participating State reserves the right to renew the Participating Addendum on an annual basis by mutual Agreement not to exceed a total of 10 years in accordance with NMSA 1978 §13-1-150.

5. **Termination:**

- a) **Grounds.** The Participating State may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Participating State's uncured, material breach of this Agreement.
- b) **Notice; Participating State Opportunity to Cure.**
 - (1) Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Participating State shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - (2) Contractor shall give Participating State written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Participating State's material breaches of this Agreement upon which the termination is based and (ii) state what the Participating State must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Participating State does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Participating State does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
 - (3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to provide the Goods or perform the Services contracted for, as determined by the Participating State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the New Mexico State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.
- c) **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Participating State's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PARTICIPATING STATE'S

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OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Participating State to the Contractor. The Participating State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. **Status of Contractor:** The Contractor and its agents and employees are independent contractors providing Goods and/or performing professional or general services for the Participating State and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **Conflict of Interest; Governmental Conduct Act:**
 - a) The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

 - b) The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - (1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Participating State employee while such employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;
 - (2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the Participating State; (ii) the Contractor is not a member of the family of a public officer or employee of the Participating State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Participating State, a member of the family of a public officer or employee of the Participating State, or a business in which a public officer or employee of the Participating State or the family of a public officer or employee of the Participating State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - (3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Participating State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Participating State whose official act, while in the Participating State's employment, directly resulted in the Participating State's making this Agreement;
 - (4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or

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small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

- (5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- (6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Participating State.

- c) Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Participating State relied when this Agreement was entered into by the Parties. Contractor shall provide immediate written notice to the Participating State if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Participating State and notwithstanding anything in the Agreement to the contrary, the Participating State may immediately terminate the Agreement.
- d) All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. Amendment:

- a) This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.
- b) If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

- 10. **Merger:** This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

- 11. **Penalties for violation of law:** The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

- 12. **Equal Opportunity Compliance:** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

- 13. **Workers Compensation:** The Contractor agrees to comply with the Participating State's laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Participating State.

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- 14. Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
- 15. Records and Financial Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Participating State, including the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The Participating State shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Participating State to recover excessive or illegal payments.
- 16. Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
- 17. Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.
- 18. Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Participating State.
- 19. Notices:** Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Participating State:

Name:	State Purchasing Director, State Purchasing Division
Address:	1100 St. Francis Dr., Room 2016, Santa Fe, NM 87505
Telephone:	(505) 827-0472
Email:	

To the Contractor:

Name:	
Address:	
Telephone:	
Contact:	
Email:	

- 20. Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the Parties.
- 21. Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
- 22. Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Purchasing Entity and the State of New Mexico may procure the Goods or Services from another source and hold the Contractor

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responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Purchasing Entity and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

- 23. Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Participating State, and the Contractor consents to the Participating State's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Participating State's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the Participating State may have under applicable law, including, but not limited to, monetary damages.
- 24. New Mexico Employees Health Coverage:**
- a) If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Participating State exceed \$250,000.
 - b) Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Participating State.
 - c) Contractor agrees to advise all employees of the availability of Participating State's publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com/>.
- 25. Indemnification:** The Contractor shall defend, indemnify and hold harmless the Purchasing Entity and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Participating State and the Risk Management Division of the New Mexico General Services Department by certified mail.
- 26. Default and Force Majeure:** The Purchasing Entity reserves the right to cancel all or any part of any Orders placed under this Agreement without cost to the Purchasing Entity, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Participating State and/or the Purchasing Entity due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Participating State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Participating State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.
- 27. Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Participating State.

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- 28. Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Participating State. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Participating State.
- 29. Inspection of Plant:** The Participating State may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.
- 30. Commercial Warranty:** The Contractor agrees that the Goods and/or Services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such Goods and/or Services, and that the rights and remedies provided herein shall extend to the Participating State and are in addition to and do not limit any rights afforded to the Participating State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
- 31. Condition of Proposed Items:** Where Goods are a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified in the Participating Addendum.
- 32. Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Participating State, its officers and employees and Procuring Entity from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
- 33. Confidentiality:** Any Confidential Information provided to the Contractor by the Participating State or, developed by the Contractor based on information provided by the Participating State in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Participating State. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Participating State within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Participating State will result in direct, special and incidental damages.
- 34. Contractor Personnel:**
- a) Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Participating State. Key personnel are those individuals considered by the Participating State to be mandatory to the work to be performed under this Agreement. Key personnel shall be:
- [Insert Contractor Staff Name(s)]**
- b) Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Participating State. For all personnel, the Participating State reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Agreement is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to the Participating State's approval. The Participating State, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Agreement. The Contractor shall also make interim arrangements to assure that the Agreement progress is not affected by the loss of personnel. The Participating State reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Participating State, meeting the Participating State's expectations.
- 35. Incorporation by Reference and Precedence:** In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of

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precedence: (1) this Participating Addendum; (2) the Master Lease Agreement, if applicable; and (3) the NASPO ValuePoint Master Agreement.

- 36. Inspection:** If this Agreement is for the purchase of Goods, final inspection and acceptance shall be made at Destination. Goods rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.
- 37. Inspection of Services:** **If this Agreement is for the purchase of services, the following terms shall apply.**
- a) Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
 - b) The Contractor shall provide and maintain an inspection system acceptable to the Participating State covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Participating State during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
 - c) The Participating State has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Participating State shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
 - d) If the Participating State performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
 - e) If any part of the services do not conform with the requirements of this Agreement, the Participating State may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Participating State may:
 - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - (2) reduce the Agreement price to reflect the reduced value of the services performed.
 - f) If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Participating State may:
 - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Participating State that is directly related to the performance of such service; or
 - (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

- 38. Insurance:** If the Services contemplated under this Agreement will be performed on or in Participating State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.
- a) Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.
 - b) Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
 - (1) Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - (2) Property damage or combined single limit coverage: \$1,000,000.
 - (3) Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - (4) Umbrella: \$1,000,000.
 - c) Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance

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and provide a waiver of subrogation.

- 39. Arbitration:** Any controversy or claim arising between the Parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

40. Reporting:

The Contractor agrees to provide a utilization report on all sales/or services and other revenues (including commissions charged) and fees to the agreement administrator in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	October 30
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

The sales report shall include the gross total sales and other revenues including commissions charged for the period subtotaled by Procuring Agency or local public body name. Even if the Contractor experiences zero sales during the quarter, a report shall still be submitted.

41. Fees:

The Contractor agrees to remit an administrative reporting fee payable by check to the State Purchasing Division for an amount equal to **one percent (1.00 %)** of the total sales and other revenues derived from the New Mexico state agencies and local public bodies. The Contractor shall indicate the contract number **30-00000-23-00092** and include the remittance check with the quarterly sales report.

Reports may be submitted via U.S. mail to NM State Purchasing Division or via email to:

GSD.QuarterlyUsageR@gsd.nm.gov

For payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building, Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

42. Lease Agreements:

”Reserved”

- 43. Subcontractors:** All Contactors, Authorized Dealers, and resellers authorized in the State of New Mexico, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor’s dealer participation will be in accordance with the terms and conditions set forth in this Participating Addendum and the aforementioned Master Agreement.

Certificate Of Completion

Envelope Id: DF2130AC458A429794D51DC5DA2A83AF

Status: Completed

Subject: Complete with DocuSign: Intent to Participate Form - Tires, Tubes, and Services 063023.pdf, Sta...

Source Envelope:

Document Pages: 9

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 1

Tami Concha

AutoNav: Enabled

1100 S Saint Francis Dr

Enveloped Stamping: Enabled

Santa Fe, NM 87502

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Tami.Concha@gsd.nm.gov

IP Address: 164.64.62.10

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/6/2023 11:11:24 AM

Tami.Concha@gsd.nm.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events**Signature****Timestamp**

Natalie Martinez

natalie.martinez1@gsd.nm.gov

New Mexico General Services

Security Level: Email, Account Authentication
(None)

Sent: 7/6/2023 11:19:36 AM

Viewed: 7/6/2023 11:23:16 AM

Signed: 7/6/2023 11:23:22 AM

Signature Adoption: Pre-selected Style
Using IP Address: 164.64.62.10**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Valerie Paulk

Valerie.Paulk@gsd.nm.gov

Signed of Behalf of State Purchasing Agent

New Mexico General Services

Security Level: Email, Account Authentication
(None)

Sent: 7/6/2023 11:23:23 AM

Viewed: 7/6/2023 11:40:38 AM

Signed: 7/6/2023 11:40:46 AM

Signature Adoption: Pre-selected Style
Using IP Address: 164.64.62.10**Electronic Record and Signature Disclosure:**

Accepted: 5/29/2020 9:40:59 AM

ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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7/6/2023 11:19:36 AM

Envelope Summary Events	Status	Timestamps
Certified Delivered	Security Checked	7/6/2023 11:40:38 AM
Signing Complete	Security Checked	7/6/2023 11:40:46 AM
Completed	Security Checked	7/6/2023 11:40:46 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 30 – PURCHASES

SUBCHAPTER 00 – N/A

PART 13 – General Conditions of Purchase

13.1 Purpose

The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the State of Rhode Island ("State") and a Vendor. These General Conditions, along with items specified in § 13.4 of this Part herein, shall serve as the Contract with the State regardless of the method of procurement.

13.2 Definitions

A. For the purposes of this Part, the following definitions shall apply:

1. "Contract" means a Purchase Order, Purchase Agreement, and/or Letter of Authorization issued by the Division, along with any and all contractual documents incorporated by reference by the Division.
2. "Purchase agreement" means a written document formally issued by the Division to a Vendor that binds the parties to general terms, but does not represent a specific order for goods or services. A Purchase Agreement may include:
 - a. A "Statewide purchase agreement" or "Master price agreement" or "MPA," which serves as an agreement for more than one agency, but does not include a specific quantity until a Purchase Order is issued; or
 - b. An "Agency purchasing agreement," or "Agency pricing agreement," or "APA," which serves as an agreement for one agency, but does not include a specific quantity until a Purchase Order is issued;
3. "Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the Division indicating a desire to enter into contracts with the State of Rhode Island, or with whom a Contract is executed by the State Purchasing Agent.

- B. All other terms contained in the State Purchases Act and State Procurement Regulations and used herein shall have the same meanings.

13.3 Procurement Process

A. Pricing

All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary in the Purchase Order or Purchase Agreement.

B. Cost of Preparation

All costs associated with the preparation, development and submission of bids or proposals and/or protests arising therefrom, in response to solicitations issued on behalf of the State, shall be the Vendor's sole responsibility. The State will not reimburse any Vendor for such costs.

C. Selection

1. Vendor bids and proposals shall be evaluated and Purchase Orders or Purchase Agreement issued with reasonable promptness and by written notice to the successful Vendor (only); bids and proposals are considered to be irrevocable for a period of sixty (60) days following the opening date unless expressly provided for to the contrary in the solicitation document, and may not be withdrawn during the specified period without the express written permission of the State Purchasing Agent.
2. The State reserves the right, before making an award, to initiate investigations as to whether or not the materials, equipment, supplies, services, qualifications, integrity, capability, capacity, and/or facilities offered by the Vendor meet the requirements set forth in the solicitation and are ample and sufficient to ensure the proper performance of the Contract in the event of award. Failure to pay subcontractors on previous Vendor Contracts may be considered (also see § 13.5 of this Part herein). If upon such examination it is found that the conditions of the solicitation are not complied with, and/or that the goods or services proposed to be furnished do not meet the requirements called for in the solicitation, and/or that the services, qualifications, integrity, capability, capacity and/or facilities of the Vendor are not satisfactory, then the State may reject Vendor's bid or proposal at the State's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before issuance of a Purchase Order or Purchase Agreement. If such examination is made, it in no way relieves the Vendor from fulfilling all requirements and conditions of the Contract.

3. Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the solicitation, offers for alternate specifications, or offers which are made subject to different terms and conditions, including form contracts, other than those specified by the State may be, at the sole discretion of the State Purchasing Agent:
 - a. Rejected as being non-responsive; or,
 - b. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or,
 - c. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State.
 - d. Acceptance or rejection of alternates or counter-offers by the State Purchasing Agent shall not constitute a precedent and shall not be considered to be binding on successive solicitations or procurements.
4. Vendor bids and proposals must bear an authorized signature or certification in a form approved by the State Purchasing Agent. Vendor bids and proposals which do not bear the required signature or certification may be deemed to be non-responsive to the solicitation. Bids submitted in pencil will not be accepted.
5. Vendor bids and proposals must utilize the unit of measure specified in the solicitation. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
6. The State Purchasing Agent reserves the right to determine whether a Vendor's bid or proposal is Responsive to a solicitation and whether a Vendor is Responsible.
7. The State Purchasing Agent reserves the right to reject any and all bids or proposals in whole or in part, to waive technical defects, irregularities, and omissions, to give consideration to a Vendor's past performance where, in the State Purchasing Agent's judgment, the best interest of the State will be served, to require additional competitive negotiations and/or to issue a request for best and final offers.
8. The State Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the solicitation, unless the Vendor expressly indicates otherwise in its bid or proposal that doing so is not acceptable.
9. Preferences may be given as authorized by law or regulation, including, but not limited to, the following:

- a. Preference may be given to bids for products raised or manufactured in Rhode Island, in the event that all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or service provider whose headquarters or primary place of business is located within the State, or in the event of a joint venture with a Vendor or service provider whose headquarters or primary place of business is within the State, shall receive preference.
- b. MINORITY BUSINESS ENTERPRISES - Pursuant to the provisions of R.I. Gen. Laws Chapter 37-14.1 reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:
 - (1) The offer is fully responsive to the terms and conditions of the Request;
 - (2) The price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service;
 - (3) The firm making the offer has been certified by the R.I. Department of Administration, Office of Diversity Equity and Opportunity to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. A minimum of ten percent [10%] of the dollar value of the work performed against contracts shall be performed by certified Minority Business Enterprises where it has been determined that subcontract and/or supply opportunities exist, and where certified Minority Business Enterprises are available. A vendor may count 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE certified as a regular dealer or supplier, and 100% of such expenditures when obtained from an MBE certified as a manufacturer, towards the MBE participation requirement under R.I. Gen. Laws § 37-14.1-6. For materials or supplies obtained from firms certified as a broker or manufacturer's rep, vendors may receive MBE participation credit only for the fees and commissions charged for the procurement of the goods and materials, but not the cost of the materials themselves. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

10. The State Purchasing Agent reserves the right to act in the State's best interest regarding awards caused by clerical errors or omissions by the Division.
11. Any Contract issued by the Division is subject to the resolution of any timely bid protest.
12. Any objections to specifications or requirements in a solicitation must be received by the Chief Purchasing Officer in accordance with State Procurement Regulation (§ [1.6](#) of this Subchapter).

D. Public Records

Vendors are advised that all records submitted to the Division may be subject to disclosure in accordance with the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq.* and/or in the course of litigation through discovery. Any records submitted which a Vendor believes are of a privileged or confidential nature or are not subject to disclosure in accordance with R.I. Gen. Laws § 38-2-2 or other applicable laws, should be clearly marked. The Vendor should provide a brief explanation as to why each portion of information marked as confidential or privileged should be withheld from public disclosure and cite the specific provision of R.I. Gen. Laws § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the Division and/or agency and/or public institution of higher education will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

In all solicitations, the words "or equal" shall be understood to apply to each article when a manufacturer's name or catalog are referenced unless the solicitation specifically states "no substitutions." When submitting a bid or proposal which includes items other than those specified in the solicitation, the Vendor must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the Vendor proposes to furnish; otherwise, the bid or proposal shall be construed as being submitted for the identical commodity described in the solicitation. The State Purchasing Agent reserves the right to determine whether or not the substitute item(s) offered by the Vendor is an approved equal to the item(s) specified in the solicitation.

1. All standards are minimum standards except as otherwise provided for in the solicitation.
2. Samples must be submitted to the Division of Purchases in accordance with the solicitation. Samples must be furnished free of charge with the understanding that they shall not be returned to the Vendor.

3. All samples submitted by Vendors may be subject to examination or testing by any laboratory the State Purchasing Agent may designate.
- F. COLLUSION - Vendor warrants that it has not, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of full competitive bidding.
- G. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

13.4 Entire Agreement

A. Incorporation

The Purchase Order, Purchase Agreement or Letter of Authorization issued by the Division, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the State and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:

1. The "State Purchases Act," R.I. Gen. Laws § 37-2-1, *et seq.*;
2. The Procurement Regulations adopted pursuant thereto;
3. The Vendor Certification Cover Form;
4. All other applicable provisions of the Rhode Island General Laws and applicable federal laws;
5. The specific requirements described in the solicitation and related solicitation documents;
6. These General Conditions of Purchase, along with applicable addenda as referenced in § 13.34 of this Part herein; and
7. The offer/proposal submitted by Vendor and accepted by the State.

B. Order of Precedence

Unless otherwise approved by the State Purchasing Agent, in the event of any express conflict or dispute regarding a Vendor's proposal, a Vendor's proposed standard terms of sale, the solicitation documents, statutes, regulations and/or these General Conditions of Purchase, the following order or precedence shall generally apply (with 1 being the highest level of precedence):

1. Federal laws and/or regulations (for federally funded contracts only)
2. Rhode Island General Laws;
3. State Procurement Regulations (Parts 1 through 13 of [this Subchapter](#)), General Conditions of Purchase and contract Addenda in addition to the General Conditions ("GC Addenda") (§ 13.34 of this Part);
4. The Purchase Order or Purchase Agreement issued by the Division;
5. The offer, proposal or bid submitted by the Vendor and to the extent accepted by the Division;
6. Solicitation documents issued by the Division; and
7. To the extent allowed by law, for an individual procurement, the State Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the State and/or to protect the health, safety and welfare of the State and its citizens.

C. Contract Contingencies

1. All Contracts are subject to the following:
 - a. All material communication between the State and any Vendor pertaining to any solicitation, award or management of a Contract shall be set forth in writing.
 - b. Vendor proposals shall be accepted by the Division with the understanding that the issuance of a Purchase Order, Purchase Agreement or Letter of Authorization shall be the only document which creates a binding Contract between the Vendor and the State. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver goods and/or services at the prices and in accordance with the conditions of Vendor's proposal. A Contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the Purchase Order. Additionally, any Contract shall be contingent upon the resolution of a timely bid protest.
 - c. No alterations or variations of the terms of the Contract shall be valid or binding upon an agency, the State, or the Division unless

submitted in writing and accepted by the State Purchasing Agent thorough issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the Division. Oral agreements or arrangements made by a Vendor with anyone, including an agency or agency employee, shall not be binding upon an agency, the State or the Division unless and until reduced to writing and approved by the State Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.

- d. Contracts shall remain in force for the term specified in the Purchase Order or Purchase Agreement or until all articles or services ordered before date of termination shall have been satisfactorily delivered or fully rendered and accepted by the State and thereafter until all terms and conditions have been met, unless:
 - (1) Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
 - (2) Extended upon written authorization of the State Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or
 - (3) Canceled by the State in accordance with other provisions stated herein.
- e. All Vendor obligations as described herein shall survive expiration, termination and/or cancellation of the Contract.

13.5 Relationship of Parties

The selected Vendor must be fully qualified and capable in all material respects to provide the specified goods and/or services. Unless specifically provided for in the solicitation, the Vendor shall be an independent contractor and not an employee, agent, partner or joint venturer with the State. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the State may consider Vendor non-payment of subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the State. If the solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.

13.6 Specified Quantity Requirements

- A. Except where expressly specified to the contrary, all solicitations are predicated on a specified quantity of goods or services, or for a specified level of funding. Provided, however, that:
1. If stated in the solicitation, the State reserves the right to modify the quantity, scope of service, or funding of any Contract, with no penalty or charge, by written notice to the Vendor; and,
 2. The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State shall not accept quantities greater than ten per cent [10%] of the specified quantity), or where the solicitation provides for other than exact quantities; and,
 3. Quantities and performance periods set forth in a Purchase Order or a Purchase Agreement may be increased or extended with approval of the State Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the Division.

13.7 Term and Renewal

Where offers have been requested or Contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is subject to the appropriation of funding and is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive one-year terms, except where expressly specified to the contrary. Purchase Orders, Purchase Agreements, and/or Change Orders appearing to commit the State to obligations of funding or terms of performance in excess of twelve (12) months may be executed for administrative convenience, but are otherwise subject to this provision. In such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

13.8 Delivery

- A. Delivery must be made as ordered and in accordance with the solicitation and Vendor's proposal. If delivery qualifications do not appear on the Vendor's proposal, then the proposal shall be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the State Purchasing Agent as to reasonable compliance with the delivery terms shall be final. The burden of proof for delay in delivery of an order shall rest with the Vendor. Except when authorized on the Purchase Order:

1. All prices shall be quoted F.O.B. destination, freight pre-paid with all transportation and handling charges paid by the Vendor;
2. Responsibility and liability for loss or damage shall remain with the Vendor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects, fraud and or Vendor's warranty obligations;
3. Deliveries shall be inside deliveries to other than a loading dock, front lobby or reception area and as designated in the Purchase Order; and,
4. Costs shall include all packaging and/or crating charges which shall be of durable construction, good condition, properly labeled and suitable for handling of contents.

13.9 Foreign Entities

In accordance with R.I. Gen. Laws § 7-1.2-1401, no business entity shall have the right to transact business in Rhode Island until it shall have procured a certificate of authority to transact business in the State from the Rhode Island Secretary of State. The term "Entity" means a corporation, a business trust, or association, a real estate investment trust, a common-law trust, a sole proprietorship or any other unincorporated business, or entity including a partnership, whether general or limited, (including a registered limited liability partnership), a foreign limited liability company, or as defined in R.I. Gen. Laws § 7-1.2-1401.

13.10 Product Acceptance

A. Quality

All goods offered or otherwise provided by Vendors shall be new, of the latest model or design, sourced from regular stock product inventories with all parts regularly used with the type of goods offered, without attachment(s) or part(s) substituted or applied contrary to manufacturer's recommendation and standard practice, of prime manufacture, and of first quality unless otherwise specified by the State.

B. Rejection of Nonconforming Goods

The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurement of services shall be construed to be work product, and subject to the provisions of this Section.

1. Failure by the State to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

2. Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive ordering, receipt, acceptance, or procurement of non-conforming goods.
3. If the Vendor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order. The State may then contract with a different Vendor and invoice the original Vendor for any differential in price over the original Contract price.
4. When materials, equipment or supplies are rejected, the same must be removed by the Vendor from State property within forty-eight (48) hours of notification, unless otherwise specified by the State. Rejected items left longer than forty-eight (48) hours or another time set by the State, shall be regarded as abandoned and the State shall have the right to dispose of those items at the Vendor's expense.

13.11 Ownership

Unless otherwise specifically provided for in the solicitation, General Conditions, or General Conditions Addenda, all data, material and documentation prepared for the State shall be considered work for hire and belong exclusively to the State.

13.12 Product Warranties

- A All product or service warranties normally offered by the Vendor shall accrue to the State's benefit, in addition to any special requirements or benefits which may be stated in the solicitation and/or additionally offered by the Vendor in its bid or proposal. During the term of any maintenance period, but for no less than one year from acceptance, the Vendor shall warrant:
1. The product or services shall perform according to the specific claims and representations made by the Vendor in its bid or proposal;
 2. The services or product offered by the Vendor are suitable for the ordinary purposes for which such product is used or services provided;
 3. The product or services offered by the Vendor are suitable for any special purposes identified in the solicitation or for which the State has relied on the Vendor's skill or judgment;
 4. The product was designed and the services performed in a commercially reasonable manner; and,
 5. The product or services are free from defects in material and workmanship.

- B. The State shall give notice of a warranty claim to the Vendor in a commercially reasonable manner, upon which, the Vendor shall repair or replace at no cost to the State the product or services. If the repaired or replaced product or services prove to be inadequate, or fail of their essential purpose, the Vendor shall refund the full amount of any payments that have been made by the State. The rights and remedies of the State under this Section are in addition to any other rights and remedies (including cover) provided by law or equity. Any alternate warranties proposed by a Vendor are subject to the provisions of § 13.3(C)(3) of this Part.

13.13 Payment

- A. Unless otherwise provided for in the solicitation, Purchase Order or Agreement, payment (subject to retention or set-off, if applicable) shall not be made by the State until goods and are delivered or services performed, in full, and accepted. After such acceptance, payment shall not be due until a properly submitted invoice, with satisfactory documentation, is delivered to the State. Payment then shall be made promptly in accordance with R.I. Gen. Laws § 42-11.1-1, *et seq.*:
1. Vendor payment terms other than as set forth herein may be rejected as being non-responsive.
 2. No partial shipments will be accepted, unless provided for by the solicitation or Purchase Order.
 3. Where a question of quality or performance is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the State Purchasing Agent.
 4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount or rebate.
 5. If not rejected, payments for used portion of inferior or defective goods shall be made by the State on an adjusted price basis.
 6. Requests for payments on Contracts under architectural or engineering supervision must be authorized by the architect or engineer and submitted to the agency involved for approval.

13.14 Set-Off Against Payments

Payments due the Vendor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent State taxes (or other just debt owed to the State), except where notice of deficiency for trust fund taxes is not a final assessment and still open for a hearing request or while the tax deficiency notice is pending in administrative hearing or from any judicial appeal therefrom.

13.15 Claims

A. Setoff

Any claim against a Vendor may be deducted by the State from any money due it in the same or other transactions. If no deduction is made in such fashion, the Vendor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the State Purchasing Agent from demanding a price adjustment in any case when the good or service is delivered or is later found to deviate from the Contract.

B. Damages for Claims

The Purchasing Agent may assess dollar damages against a Vendor determined to be non-performing or otherwise in default of its contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification, rejection, and/or suspension. Vendor may appeal any assessment of damages in accordance with § [1.6](#) of this Subchapter.

13.16 Unused Balances

Unless otherwise specified, all unused quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term stated in the Contract. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

13.17 Confidentiality

A. "Confidential Information"

1. Whenever used in a Contract, the term "Confidential information" means:
 - a. Information exempt from disclosure to the public or other unauthorized persons under either Rhode Island or federal statutes or regulations; or
 - b. Information related to the State's infrastructure, operations, security, or personnel unless otherwise identified by the State in writing as non-confidential at the time of disclosure; or
 - c. Any other information which the State has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or

- d. State Data which includes User Data and the State's data used, processed, hosted, stored, or generated as a result of the Services. User Data means any and all information reflecting the access or use of the Services by or on behalf of the State or any authorized user, including any end user profile, visit, session, impression, information, click-through or click stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing; or
- e. Information that would ordinarily be reasonably considered confidential or proprietary in the light of the circumstances surrounding disclosure.

B. Form of Confidential Information

- 1. Confidential Information may take the form of, but is not limited to, plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, any and all personal and/or confidential information pertaining to State employees and/or State personnel, including, but not necessarily limited to, any and all personal and/or confidential healthcare and/or health and/or medical data and/or any other similar and/or related personal and /or confidential information, pertaining to State employees and/or State personnel or any other material or information supplied by or on behalf of the State, State Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the State. Confidential Information may be in tangible or intangible form. The State's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Vendor's obligation to keep such information confidential in accordance with these terms.
- 2. Exemptions to Confidential Information
 - a. Notwithstanding the foregoing, and except as provided in the Contract or Addenda, the term "Confidential information," shall not be construed to include information that:
 - (1) Is or becomes readily available in public records or documents, other than as a result of an inappropriate disclosure by Vendor or other entity or persons acting on behalf of Vendor, or

- (2) Can be documented to have been known by Vendor prior to its release to the Vendor by the State without an obligation of confidentiality, or
- (3) Is disclosed pursuant to applicable Rhode Island law and/or federal law, judicial action or government regulations.

C. Vendor Acknowledgement

Vendor acknowledges that the Confidential Information is confidential and proprietary information and that its protection is essential to the security and mission of the State. It is understood that the Vendor is not granted an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information other than any licensing provisions as defined in a Contract and/or agreement between the State and Vendor.

D. Vendor's Agents

Vendor acknowledges and also shall require its employees, officers, independent contractors, and subcontractors, agents and any other entities acting on its behalf (collectively "Affiliates") to:

1. Copy, reproduce or use Confidential Information only for the purpose described in the Contract and not for any other purpose unless specifically authorized to do so in writing by the State; and
2. Not permit any other person or entity to use or disclose the Confidential Information for any purpose other than those expressly authorized by the Contract; and
3. Disclose such Confidential Information only to those of its Affiliates who require knowledge of the same for the purpose described in the Contract; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of the Contract; and
4. Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Affiliates a copy of the terms of the Contract and any other Non-Disclosure Agreement the State may provide for said Affiliates signature. Such restrictions will be at least as stringent as those applied by the Vendor's own most valuable confidential and proprietary information and as required by the Contract.
5. The acts or omissions of Vendor's Affiliates with respect to the Confidential Information shall be deemed to be acts or omissions of the Vendor.

E. Additional Requirements

1. Vendor will not remove, obscure or alter any confidentiality or trade secret notation from the Confidential Information without the State's prior written authorization.
2. Confidential Information will remain the exclusive property of the State unless as otherwise provided for in any agreement and/or the Contract between the State and Vendor; upon completion of the project and/or services, or whenever requested by the State, Vendor will promptly destroy or return to the State, in a form acceptable to the State, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the State in writing.
3. Vendor agrees that the breach of these terms would cause irreparable damage to the State. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the State harmless from actual damages from losses that result from its breach, including, but not limited to, reasonable attorneys' fees and related litigation expenses. Also, the State has the right to seek an order to restrain the Vendor and its agents, Affiliates, etc. from breaching these terms or otherwise commence any action in law or in equity.

13.18 Taxes

- A. The State and its agencies are exempt from payment of any tax imposed directly on the purchaser of goods and services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, R.I. Gen. Laws § 31-36-1, *et seq.* Except for the Rhode Island Motor Fuel Tax, federal, state and local taxes should not be included in the Vendor's bid or proposal price or otherwise invoiced. Exemption Certificates will be furnished upon request. Vendors and their subcontractors performing improvements to real property pursuant to a contract with a State agency may purchase materials specifically allocated for the performance of said Contract from their suppliers provided that:
1. The materials are essential to the project;
 2. The materials are incorporated into the project; and,
 3. The Vendor or its subcontractors provide their suppliers with an exemption certificate.

13.19 Insurance/Bonds/Other Security

- A. Insurance

Prior to issuance of a Contract, Vendor shall submit to the Division proof of insurance coverages as set forth in the General Condition Addendum A (General

Insurance Requirements), other applicable General Condition Addenda and/or as required by the solicitation ("Insurance Requirements"). Vendor shall comply with the minimum Insurance Requirements imposed by the State. If different or additional insurance requirements are set forth in the solicitation, then Vendor shall comply with the insurance requirements specified in the solicitation.

B. Payment and Performance Bonds

When required by the solicitation or the General Condition Addenda, the successful Vendor shall furnish a payment and/or performance bond in the amount stated in the solicitation from a surety licensed to conduct business in the State of Rhode Island upon the tentative selection.

C. Other Security

The State Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or other comparable forms of security, and/or to require additional or more extensive coverage for any individual procurement. Vendors shall provide certificates of insurance and required endorsements for all insurance requirements of the solicitation in form and terms acceptable to the State Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not "responsible." The State Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the State's interests.

13.20 Termination, Default, Cancellation and Stop Work

A. Non-Performance or Breach

A Contract may be rescinded, canceled or terminated by the State Purchasing Agent, at the Vendor's expense upon non-performance or breach by the Vendor of any of its obligations. Failure of a Vendor to cure such non-performance or breach within ten (10) business days after the receipt of notice, unless otherwise determined by the State Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing State contracts and or subcontracts to which the Vendor is a party, and/or the suspension or debarment of the Vendor from participating in future procurements. The State may pursue any and all of its rights and remedies at law or in equity against the defaulting Vendor or its surety.

B. Timeliness

Failure of a Vendor to deliver the required goods or perform services within the time specified and in accordance with the applicable standards of professional skill and care, or within reasonable time as interpreted by the State Purchasing Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the State Purchasing Agent, may cause

the State Purchasing Agent to purchase in the open market to replace those goods or services rejected or not delivered. The State Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any Contract when necessary. On all such purchases, the Vendor, and/or its surety, agrees to promptly reimburse the State for excess costs occasioned by the Vendor's default. Should the replacement cost be less, the Vendor shall have no claim for the difference. Vendor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service may be considered to be in default of Contract. The State Purchasing Agent may contract for completion of the work with another Vendor and seek reimbursement of all costs and expenses from the defaulting Vendor and/or its surety and pursue all rights and remedies at law or in equity.

C. Availability of Funds.

Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds by the General Assembly and/or the Federal Government. If any Contract is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds. If the term of extends into fiscal years subsequent, continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected goods not yet delivered, terminate any services supplied to the State, and relieve the State of any further obligation thereof. State shall remit payment for goods and services accepted prior to the date of termination in the notice.

D. Convenience

1. For subscription services the State may terminate for convenience.
2. For all other Contracts, the State Purchasing Agent shall have the right to terminate the Contract for convenience if the State Purchasing Agent determines in writing that termination is in the State's best interest. The Vendor shall be paid for work completed and accepted, but Vendor shall not be entitled to recover lost profits.

E. Stop Work

In the interests of health, safety and welfare, economic or otherwise, the State Purchasing Agent may issue a stop work order to a Vendor on any Contract for a reasonable period of time. The Vendor shall cease and desist any further work until so ordered by the State Purchasing Agent. In the event that the Vendor bears responsibility for the conditions requiring a stop work order, the State shall not be responsible for any delays.

13.21 Indemnification

A. General

Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys' fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor's breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, subcontractors or volunteers at any tier.

B. Intellectual Property

Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against all claims, demands, damages, liabilities, death, injury, judgments and other costs and expenses (including attorneys' fees), arising out of or related to, directly or indirectly, in whole or in part, a claim that a product or service or its use infringes the intellectual property rights of another person or entity.

13.22 Vendor Obligations

A. In addition to the specific requirements imposed by the State in the Contract, a Vendor engaged in providing goods or services to the State shall generally have the following standard responsibilities:

1. Perform services in accordance with applicable standards of professional skill and care or as otherwise provided in the solicitation or Contract. When applicable law requires that services be performed by licensed professionals, Vendor shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.
2. To furnish adequate protection from damage for all work and to repair damage of any kind, for which it or its workmen are responsible, to the building or equipment, to its own work, or to the work of other Vendors.
3. To clear and remove all debris and rubbish resulting from its work from time to time, as directed or required, at completion of the work to leave the premises in a neat, unobstructed condition, broom clean, and in satisfactory order and repair.
4. To store equipment, supplies, and material at the project site only upon approval by the State, and at its own risk.

5. To perform all work so as to cause the least disruption and inconvenience to the State, and with proper consideration for the rights of other Vendors and workers.
6. To acquaint themselves with conditions to be found at the project site, and to assume responsibility for the appropriate dispatching of equipment and supervision of its employees during the conduct of the work.
7. To supervise Vendor employees and subcontractors and to ensure that its employees are instructed with respect to special rules, regulations, policies, and procedures in effect for any State facility or project site, and that its employees comply with such rules, regulations, policies and procedures.
8. To perform background checks of Vendor employees, subcontractors and agents as required by the State.
9. **EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION** - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and R.I. Gen. Laws Chapter 28-5.1. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.
10. **DRUG-FREE WORKPLACE REQUIREMENT** – Vendors who do business with the State and their employees shall abide by the State's drug-free workplace policy. Specifically, Vendor agrees as follows:
 - a. Vendor employees and agents are required to refrain from the abuse of alcohol and/or illegal and/or prescription drugs and must report to work in a fit condition to perform their duties or be subject to disciplinary action by the Vendor.
 - b. All Vendor employees, while on State business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.
 - c. Vendors will take appropriate disciplinary action with all violators of this policy who are currently employed. Vendors will not knowingly consider for employment anyone who is known to currently abuse alcohol and/or illegal and/or prescription drugs.

11. In the best interest of the State, the State Purchasing Agent reserves the right to remove or have a Vendor immediately remove any Vendor employee, subcontractor or agent of the Vendor working on a State Contract based on a good faith belief that the individual is not acting in an appropriate, professional and/or in a commercially reasonable manner.
12. To comply with the provisions of R.I. Gen. Laws § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

13.23 Force Majeure

Neither the State, nor its Vendors, shall be liable to the other for failure or delay in performance due to a cause not reasonably foreseen by, beyond the control of, and without the fault or negligence of the party declaring a force majeure event; provided that the party declaring a force majeure event shall have used its best efforts to avoid such failure or delay in performance, minimized the impact thereof, and given prompt written notice to the other party when first discovered, fully describing its probable effect and duration. In such event of excusable delay or non-performance, the State shall have the right at its option and without liability to cancel by notice to the Vendor any and all portions of Vendor's performance so affected and to take such other action as may be necessary. The State may, after ascertaining the facts and the extent of the delay, extend the time for completing performance when the facts so justify and amend the timetable accordingly. The State shall not be liable for any increased costs, including price escalation, beyond the performance or delivery date, due to a force majeure event. Force majeure shall not include a Vendor's financial distress or the financial distress of Vendor's parent, subsidiary, affiliated or associated company; claims or court orders that restrict Vendor's ability to deliver the goods, products or services contemplated by the Contract; strikes; labor unrest; supply chain disruptions; Vendor's subcontractor's or supplier's financial distress, conduct, negligence or default; or, as otherwise set forth within the Contract and associated documents.

13.24 Compliance with Law

During the term of the Contract with the State, Vendors shall comply with all statutes, laws, regulations, codes, orders, policies, rules and regulations of federal, state or municipal authorities applicable to the furnishing of such goods or services as set forth in the solicitation and the Vendor's bid or proposal all of which are hereby incorporated by reference into any Purchase Order or Purchase Agreement issued by the Division. Vendors shall pay for all required permits, licenses and fees required for the delivery of goods or services to the State unless otherwise stated in the solicitation or Contract.

13.25 Subcontracting, Assignment, Merger or Acquisition, Key Personnel, Third-Party Payment, and Prompt Payment of Subcontractors

A. Subcontracting

Vendors shall not subcontract with any third-party, except as set forth in its bid or proposal, without the prior written consent of the State Purchasing Agent. Such consent, if granted, shall not relieve the Vendor of any of its responsibilities under the Contract, nor shall it create privity of contract between the State and the sub-contractor. If a Vendor uses a sub-contractor to fulfill its responsibilities, then the Vendor shall be responsible for the sub-contractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Provided, however, for Rhode Island Department of Transportation ("RIDOT") road, bridge and heavy construction projects, approval of subcontractors shall be in accordance with "Bluebook" specifications issued by RIDOT. Upon request, contractors must submit to the Division of Purchases a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

B. Assignment

Vendors shall not, in whole or part, assign, transfer, convey, sublet, delegate or otherwise dispose of a Purchase Order, Purchase Agreement or Contract with the State or its right, title or interest therein, or its power to execute such Contract prior to issuance of a Purchase Order, to any other person, company, corporation, or entity without the written consent of the State Purchasing Agent. If consent is not granted, then the assignment, transfer, conveyance, sublet, delegation, or disposal shall be void ab initio.

C. Merger or Acquisition

If subsequent to the submission of a bid or proposal and prior to issuance of a Purchase Order or Purchase Agreement, a Vendor merges with or is acquired by another entity, then the Vendor shall provide appropriate and legally binding documentation between the Vendor and the successor entity ratifying acceptance of the Vendor's bid, proposal and any Contract terms, conditions, and pricing submitted to the Division. The State Purchasing Agent may disqualify the Vendor if the successor entity is determined to be not responsible.

D. If, after issuance of a Purchase Order, there is a material acquisition or change of ownership of a Vendor or its parent to another entity or person, the State Purchasing Agent may either authorize assignment of the Purchase Order or Purchase Agreement to the successor entity or cancel the Purchase Order or Purchase Agreement.

E. Key Personnel

If the Vendor's bid or proposal identified key personnel who would be responsible for fulfillment of the Vendor's performance obligations and said key personnel are for any reason no longer available, then the State Purchasing Agent may either authorize substitution of said key personnel by the Vendor or cancel the Contract.

F. Third-Party Payment

Unless expressly provided for in the solicitation, the State will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the State Purchasing Agent. If a Vendor's bid or proposal is contingent upon such payment(s), then it must be clearly stated within the bid or proposal and is subject to approval by the State Purchasing Agent.

G. Prompt Payment of Subcontractors

In accordance with R.I. Gen. Laws § 42-11.1-3(b) Vendors shall make prompt payment for satisfactory subcontract work for which the State has made partial or full payment. The State reserves the right to determine whether a Vendor, who repeatedly fails to make prompt payment to subcontractors, is Responsible relative to future procurements, and may suspend, debar or otherwise remove such Vendors from the State Bidders List.

13.26 Advertising

Vendors shall not reference a State Contract for the purposes of advertising or promotion without written authorization from the State Purchasing Agent and any agency owner of the referenced Contract.

13.27 Non-Exclusive Rights

The State reserves the right to issue multiple solicitations for goods or services similar or identical to the goods or services described in a solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

13.28 Election of Remedies

All rights exercisable by and remedies of the State shall be cumulative. The exercise or beginning of the exercise by the State of any of its rights and remedies will not preclude the State from exercising any other right hereunder or otherwise granted by law or in equity.

13.29 Survival

All Vendor obligations herein shall survive expiration, termination and/or cancellation of the Contract.

13.30 Contract Transition

Vendor agrees to act in good faith and a commercially reasonable manner at all times in the transition of a Contract to a new Vendor.

13.31 Governing Law, Forum

- A. The construction and effect of any solicitation, Contract or Purchase Order documents, Purchase Agreement or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq.* shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise.
- B. After exhaustion of any administrative remedies, any suit, action or proceeding brought by a Vendor in connection with any solicitation, Contract, or Purchase Order or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq.* shall be brought solely in the Providence Superior Court, Providence, Rhode Island. Vendors irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.

13.32 Effective Date and Commencement of Work

- A. Effective Date of the General Conditions

The General Conditions shall apply to all procurements issued after the effective date of these regulations.

- B. Contract Effective Date

The effective date of any procurement shall be the date contained in the Contract. No work or services shall commence prior to the issuance of a Purchase Order or written authority to proceed formally issued by the Division. Any work performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the State.

13.33 Amendments to General Conditions

The State Purchasing Agent reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the State and/or protect the health, safety or welfare, economic or otherwise, of the State and its citizens.

13.34 Contract Addendums in Addition to the General Conditions of Purchase

- A. In addition to the General Conditions of Purchase, the additional contract Addenda (“GC Addenda”) listed below shall apply to specific types/categories of Contracts with the State at the direction of the Division. The Division shall indicate any applicable GC Addenda in the solicitation or other procurement. These GC Addenda shall be considered as additional Contract terms and conditions with the State.
- B. The GC Addenda may be amended from time to time without Administrative Procedures Act promulgation and at the discretion of the Division. The GC Addenda shall be considered contract terms and not regulations.
- C. The Division may post the current GC Addenda on the Division’s website for reference purposes and/or may include with the solicitation. The GC Addenda includes the following:
 - 1. GC Addendum A – General Insurance Requirements
 - 2. GC Addendum B – Information Technology Requirements
 - 3. GC Addendum C – Public Works Project Requirements (AIA Agreements)
 - 4. GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners.
 - 5. GC Addendum E – Standard Business Associates Agreement Requirements
 - 6. GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above.
- D. The Division reserves the right to add GC Addenda as necessary without further promulgation of regulation. Again, any additional GC Addenda would be considered a Contract term.
- E. In lieu or in addition to any GC Addenda, the Division reserves the right to include any contract terms in a specific solicitation or procurement as necessary.

13.35 Severability

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

220-RICR-30-00-13

TITLE 220 - DEPARTMENT OF ADMINISTRATION

CHAPTER 30 - PURCHASES

SUBCHAPTER 00 - N/A

PART 13 - GENERAL CONDITIONS OF PURCHASE (220-RICR-30-00-13)

Type of Filing: Adoption

Agency Signature

 E-SIGNED by Michael DiBiase

Agency Head Signature

December 11, 2018

Agency Signing Date

Department of State

01/01/2019

Regulation Effective Date

 K.C.

Department of State Initials

December 12, 2018

Department of State Date

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of General Services
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, **Department of General Services** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **Tires and Tubes** as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. **This participating addendum is for the provision of Tires and Tubes further defined in NASPO RFP0223005113 issued by the State of Iowa. Tire services are excluded from this participating addendum. Tires and Tubes shall be provided to the State through manufacturer's Authorized Dealers. The Authorized Dealer, as defined in RFP0223005113, shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Master Agreement and meet all service and delivery timelines.**

A.3. **Delivery Time (Days).** – All Authorized Users except the Tennessee Department of Transportation (TDOT).

Contractor shall provide all goods or services as required and described in this Participating Addendum and shall meet all service and delivery timelines specified in this Participating Addendum. All tires must be delivered within approximately 10 days after receipt of a purchase order (ARO). Special orders, OTR, Implement, loader, grader tires not normally stocked by dealers shall be delivered within 30 days.

A.4. **Delivery Time (Days).** – TDOT Specific

The contractor shall be required to maintain or to have available for its own use personnel, equipment, and products sufficient to perform as specified below: All tires shall be delivered in 2-4 days after receipt of a purchase order or purchase notification for quantities of 12 tires or less. Tires ordered in bulk (more than 12, or to replenish tire inventory stocked by the agency) shall be delivered within 10 days after receipt of a purchase order. Special orders, OTR, implement, loader, grader tires, or tires not normally stocked by dealers shall be delivered within 30 days.

Listed on Appendix 1 is the TDOT Regional and District Garages (which are subject to change throughout the Participating Addendum period.

A.4. **Minimum Order (Exemption) - Minimum Order (Exemption).** Individual orders for less than four (4) tires may be exempt from purchase from this contract. In case of an emergency the four (4) tire minimum will be exempt. User agencies will purchase by applicable purchasing procedures.

A.5. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and

conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.6. Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.
- A.7. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on **DATE** ("Effective Date") and extend for a period of **thirty-six (36) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **two (2)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **thirteen million, seven hundred fifty dollars (\$13,750,000.00)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this

Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix and # as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

State Agency Billing Address

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: State Agency & Division Name;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.

- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
 - a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title
 State Agency Name
 Address
 Email Address
 Telephone # Number
 FAX # Number

The Contractor:

Contractor Contact Name & Title**Contractor Name****Address****Email Address****Telephone # Number****FAX # Number**

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if

the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment **Reference**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide

all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. §12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form

that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars (**\$1,000,000**) per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Tenn. Code Ann. § 12-4-119.

- D.36. Prohibited Contract Terms. The prohibited contract terms and conditions enumerated in Pub. Ch. 113, § 5, shall be a material provision of this Contract. The Contractor acknowledges, understands, and agrees that the inclusion of a term or condition prohibited by Pub. Ch. 113, § 5, shall be null and void and the Contract shall be enforceable as if the Contract did not contain such term or condition.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to **Solicitation Number (Attachment Reference)** and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add **lines, items, or options** that are needed and within the Scope but were not included in the original Contract. Such **lines, items, or options** will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add **lines, items, or options**, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the **lines, items, or options** on the other **goods or services** required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new **lines, items, or options**; and
 - (4) **Any additional information requested by the State.**
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
 - c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
 - d. Only after a MOU has been executed shall the Contractor **perform or deliver the new lines, items, or options.**
- E.5. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

- E.6. Statewide Contract. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):
- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
 - b. Tennessee local governmental agencies;
 - c. members of the University of Tennessee or Tennessee Board of Regents systems;
 - d. any private nonprofit institution of higher education chartered in Tennessee; and,
 - e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

- E.7. Statewide Contract Reports. All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than **ten (10)** days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than **January 10th**). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by Tennessee State Agencies and Authorized Users. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. **Edison contractnumber**
2. **Contract line itemnumber**
3. **Invoice date**
4. **Invoice number**
5. **Supplier part number**
6. **Item or bundle description**
7. **Quantity purchased**
8. **Unit of measure**
9. **Unit of measure description**
10. **Name of State Agency or Authorized User**
11. **Identity of purchaser: State entity or non-State entity**
12. **State Agencylocation**
13. **Unit/Contract price per line item**
14. **List price as listed in supplier's catalog if catalog item**
15. **Subtotals for each category above**
16. **Grand totals for each category above**

Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTACHMENT REFERENCE**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Appendix 1

TDOT Regional and District Garages

These are subject to change throughout the PA period:

Dept of Transportation - Region I	Districts 11-16
7345 Region lane	
Knoxville, TN 37914	
Attn: Roger Poole, 865-594-2697	

Dept of Transportation - Region II	Districts 21-25
4005 Cromwell Road	
Chattanooga, TN 37421	
Attn: Robert Kelly, 423-510-1231	

Dept of Transportation - Region III	Districts 31-36
6601 Centennial Blvd.	
Nashville, TN 37243-0360	
Attn: Richard Haliburton, 615-350-4423	

Dept of Transportation - Region IV	Districts 41-45
300 Benchmark Place	
Jackson, TN 38302-0429	
Attn: Ricky Wylie, 731-935-0265	

The following are TDOT's District Garages and the Contact Personnel:

Region I

11. Johnson City
Dillard Richmond
423-282-0651
Box 3518 CRS
Johnson City, TN 37602-3518

12. Morristown
Eric Wolfenbarger
423-587-7026
1825 State Street
Morristown, TN 37814

13. Newport
Jimmy Sauceman
423-623-1227
Box 28
Newport, TN 37822

14. Lafollette
Larry Robbins
423-566-9631
2841 General Carl. W. Stiner Hwy.
Lafollette, TN 37766

15. Knoxville (No Garage)

16. Harriman
Doug McKissack
865-882-3618
1951 South Roane
Harriman, TN 37748

Region II

21. Chattanooga (No Garage)

22. Dunlap
Kerry Hollis
423-949-2128
P.O. Box 355
Dunlap, TN 37327

23. Crossville
Lynn Tollett
931-484-5041 (615-741-1140)
P.O. Box 1069
Crossville, TN 38557

24. Cookeville
David Webb
931-372-2341
P.O. Box 2929
Cookeville, TN 38502

25. Tullahoma
Flint Frame
931-454-1921
P.O. Box 98
Tullahoma, TN 37388

Region III

31. Nashville (No Garage)

32. Gallatin
Ray Horsley
615-451-5822
1215 Hartsville Pk. Gallatin, TN 37066

33. Clarksville
Jeremy Perry
931-648-5570
1918 Wilma Rudolph Blvd. Clarksville, TN 37040

34. Belfast
931-276-2219
2099 Fayetteville Hwy.
Belfast, TN 37019

35. McEwen
Mike Brown
931-582-6293
Rt. 3, Box 306B McEwen, TN 37101

36. Lawrenceburg
Alan Staggs
931-766-1414
1213 N. Locust
Lawrenceburg, TN 38464

Region IV

41. Mckenzie
Scottie Rainey
731-352-5375
P.O. Box 637,
Mckenzie, TN 38201

42. Newbern
Kenneth Holder
731-627-2503
Box 179
Newbern, TN 38059

43. Bethel Springs
David Dockery
731-934-7291
Box 2929
Bethel Springs, TN 38502

44. Jackson (No Garage)

45. Arlington
Bobby Sartain
901-867-2959
Box 126
Arlington, TN 38002

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) "**Division**" means the Division of Purchasing and General Services.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

- b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
- c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also

is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User.

If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time

of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
 4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
 - Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 - Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized

areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **PUBLIC CONTRACT BOYCOTT RESTRICTIONS:** In accordance with Utah Code 63G-27-102, vendors contracting with the State to provide any good or service, including supplies, information technology, or construction services, must certify that they are not currently engaged in an "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in

Section 102. Vendors must also agree not to engage in either boycott for the duration of this Contract. For example, a vendor may not, without an ordinary business purpose, boycott the State of Israel or boycott companies that (1) engage in activities related to traditional energy, mining, agriculture; (2) engage in the manufacture, distribution, sale, or use of firearms; (3) do not meet environmental standards beyond applicable state and federal laws; or (4) do not facilitate access to abortion or sex characteristic surgeries. Accordingly, Contractor certifies that it is not currently engaged in either an economic boycott or a boycott of the State of Israel, or both. Contractor also certifies that it will not engage in such boycotts during the term of this Contract. If Contractor does engage in either such boycott, or both, it shall promptly notify the State in writing.

(Revision Date: 6/8/2023)

**COMMONWEALTH OF VIRGINIA
REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND NONPROFESSIONAL SERVICES**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "I Sell To Virginia".
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Subcontractors:**

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract and procure all goods and/or services contracted for, from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all coverage will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in

the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle).)

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA (www.eva.virginia.gov) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition "eVA Orders and Contracts" to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as "Micro Business Set-Aside Award Priority" or "Small Business Set-Aside Award Priority" accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- CC. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a "Contract Worker"), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor's (and any subcontractor's) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)



**PARTICIPATING ADDENDUM
NASPO VALUEPOINT**

INSERT APPLICABLE GOODS/SERVICES

Administered by the State of [REDACTED] (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: [REDACTED]

Insert Name of Contractor
(hereinafter "Contractor")

and

State of Washington
(hereinafter "Participating State")

WASHINGTON CONTRACT No.: [REDACTED]

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and [REDACTED], a [REDACTED] ("Contractor") and is dated and effective as of [REDACTED], 20 [REDACTED].

RECITALS

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.
- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for [REDACTED] led by the State of [REDACTED] for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
 - (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - (c) CONTRACT USAGE AGREEMENT PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Contract Usage Agreement (CUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

3. **PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:**

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#).

Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
 - (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
 - (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.
- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:
$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$
 - (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
 - (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported

by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Contract No.: [REDACTED]
 - The NASPO Master Agreement No.: [REDACTED]
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participating Addendum or exercise any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES: Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- (b) **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION).** Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

3.6. COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION: Contractor shall comply with

applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

3.7. CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:

- (a) **CONTRACTOR'S SALES AUTHORITY.** Pursuant to this Participating Addendum, Contractor is authorized to provide only those goods/services set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
 - Washington Contract Number ;
 - Lead State Master Agreement Number ;
 - Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM); and
 - Applicable Purchaser's order number.

Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

3.8

4. LEASE AGREEMENTS: Insert applicable provision.

5. PRIMARY CONTACTS: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Participating State

Attn:
State of Washington
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360)
Email:

Contractor

Attn:

Tel: ()
Email:

6. SUBCONTRACTORS: Insert applicable provision.

7. ORDERS: Unless the parties to the applicable purchase order agree in writing that another contract or agreement applies to such order, any order placed by a Purchaser for goods/services available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

8. GENERAL:

- 8.1. INTEGRATED AGREEMENT; MODIFICATION. This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- 8.2. AUTHORITY. Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 8.3. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Participating Addendum or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- 8.4. COUNTERPARTS. This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

INSERT NAME OF CONTRACTOR,
A

By: _____

Type Name

Its: _____

Date: _____

By: _____

Type Name

Its: _____

Date: _____

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Attachment 6 PROTEST INFORMATION

This attachment is intended to provide Offerors with an overview of the Lead State's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

An Offeror whose Proposal has been timely and who is aggrieved by the Notice of Intent to Award of the Iowa Department of Administrative Services may appeal the decision by emailing a written notice of appeal (in accordance with 11-Chapter 117.20, Iowa Administrative Code) to the Director of the Department of Administrative Services and carbon copy to the RFP Contact. The notice must be filed within five (5) days of the date of the Notice of Intent to Award issued by the Iowa Department of Administrative Services, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.725.2064. The notice of appeal must clearly and fully identify all issues being contested by reference to the page, section, and line number(s) to the RFP and/or the Notice of Intent to Award. A notice of appeal may not stay negotiations with the apparent successful Offeror.

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Attachment 7

OFFEROR INFORMATION, ACKNOWLEDGEMENTS, AND CERTIFICATIONS

I. OFFEROR INFORMATION

- A. **Company's Full Legal Name:**
- B. **Primary Business Address:**
- C. **Federal Tax Identification Number:**
- D. **Entity Type:**

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Limited Liability Company
- ☐ Corporation

II. BUSINESS DETAILS

- A. **Company Website.** Provide a URL for your company's website.
- B. **Company Size.** Identify the number of employees working for your company.
- C. **Ownership Structure.** Describe your company's ownership structure.
- D. **Litigation.** List all claims of non-performance or breach from customers in excess of \$5,000, including all pending litigation matters (including civil, criminal, or appellate) or criminal convictions in the past 5 years for the company and all principals. Attach an additional document if necessary.

III. PROPOSAL CONTACT

The Proposal Contact must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact.

- A. **Proposal Contact Name:**
- B. **Proposal Contact Title:**
- C. **Proposal Contact Email:**
- D. **Proposal Contact Phone Number:**

IV. ACKNOWLEDGEMENTS AND CERTIFICATIONS

By signing below and submitting a response to this RFP, Offeror acknowledges and certifies the following:

- A. **Debarment.** (Check one of the below.)
 - ☐ Neither Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency.
 - ☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

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B. Non-collusion.

1. This proposal has been developed independently by Offeror and has been submitted without collusion and without any agreement, understanding, or planned common course of action with any other Offeror or supplier of Product in a manner designed to limit fair and open competition.
2. The contents of this proposal have not been communicated by Offeror or its employees or agents to any person not an employee or agent of Offeror and will not be communicated to any such persons prior to the RFP Close Date.

C. Data Disclosure to Foreign Governments. (Check one of the below.)

- ☐ Offeror is not an entity subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments.
- ☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

D. Conflicts of Interest. (Check one of the below.)

- ☐ Offeror represents that none of its officers or employees are officers or employees of the Lead State and that none of its officers or employees have a conflict of interest as defined by the laws, rules, or policies of the Lead State.
- ☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

E. Business Certifications. (Check all that apply.)

- ☐ Offeror is a certified [demographic]-owned business, as defined in [statutory citation].
- ☐ Offeror is a resident business, as defined in [statutory citation].

F. Required Insurance. Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the levels prescribed in Attachment 4, Sample Master Agreement. Offeror understands that this requirement is mandatory and will not be negotiated by the Lead State.

G. NASPO ValuePoint Administrative Fee. Offeror agrees to pay a NASPO ValuePoint administrative fee and submit summary and detailed sales reports in accordance with Attachment 4, Sample Master Agreement. Offeror understands that this requirement is mandatory and will not be negotiated by the Lead State.

H. Marketing Plan. If awarded a Master Agreement resulting from this RFP, within 30 days of execution of the Master Agreement, Offeror will meet with NASPO ValuePoint marketing personnel to review and track progress on the marketing plan described by Offeror in Attachment 8, Offeror Response Worksheet.

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- I. Confidential, Proprietary, or Protected Information.** As set forth in Attachment 1, RFP Terms and Conditions, if Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment 11, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.
- J. Understanding of the RFP.** Offeror has read the RFP in its entirety and understands and agrees to comply with all requirements set forth therein. Any conflicts in the materials composing the RFP and any issues relating to the content of the RFP, including instructions, requirements, or specifications Offeror believes to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful, have been brought to the attention of the Lead State using the process described in the RFP for asking questions or, if applicable, by filing a protest. In accordance with Attachment 1, RFP Terms and Conditions, Offeror acknowledges and understands that any protest, claim, dispute, or action based upon a conflict or issue described herein must be filed no later than the RFP Close Date, and Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described herein if not filed by the RFP Close Date.

SIGNATURE

The undersigned is one of the following:

1. The Offeror, if Offeror is an individual;
2. A partner in the company, if Offeror is a partnership; or
3. An officer or employee of the responding corporation having authority to sign on its behalf, if Offeror is a corporation.

By signing below, the undersigned warrants that the representations made and the information provided in Offeror's proposal are true, correct, and reliable for purposes of evaluation for a potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from contract award and may subject the undersigned, Offeror, or both to suspension or debarment proceedings, as well as other remedies available to the Lead State by law, including termination of any Master Agreement awarded to Offeror.

OFFEROR:

Signature

Date

Printed Name

Title

Email Address

Phone Number



Attachment 8 OFFEROR RESPONSE WORKSHEET

Offeror must provide complete and succinct responses to each item below. **Insert your responses into this worksheet directly below each question or prompt.** While supplementary marketing materials are neither requested nor desired, Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the RFP's Scope of Work.

1. Response to Mandatory Minimum Requirements

- A.** Offer shall be the Original Equipment Manufacturers (OEM) for a minimum of six (6) tires and tubes subcategories. **Please confirm you meet this requirement.**
1. Pursuit and Performance Tires
 2. Automobile/Passenger Vehicles
 3. Light Duty Trucks: Radial and Bias
 4. Medium Commercial/Heavy Duty Trucks/Buses
 5. Off-the-Road OTR: Radial and Bias
 6. Agriculture/Farm
 7. Industrial
 8. Specialty Tires
 9. EV Tires
 10. Retread
- B.** The quality for all tires shall be the equivalent or greater than Original Equipment Manufacturers (OEM) as original for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tires supplied shall be marked with Federal Department of Transportation (DOT) compliance symbol. Tires shall conform to all applicable Federal Specifications. **Please confirm you meet this requirement.**

All tires in subcategories one (1) through nine (9) shall be new, unused and shall have been produced or manufacturer within the last one (1) year prior to delivery to the purchasing Entity. Should an Authorized Dealer deliver a tire(s) with a manufacturing date exceeding the one (1) year limit, the Authorized Dealer shall pick up the expired tire(s) and replace them with tire(s) that meet the manufacturing date requirement for no additional fee to the Purchasing Entity. **Please confirm you meet this requirement.**

All tires shall have the size, manufacturer's name, DOT number, serial number, and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. shall not be acceptable. **Please confirm you meet this requirement.**

Tires offered shall have been tested to meet or exceed American Society of Testing and Materials (ASTM) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operations performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers. **Please confirm you meet this requirement.**

- C.** The Offeror shall provide a website dedicated to any Participating State that includes, but, is not limited to, services, cost, technical specifications, online ordering, and payment capability. **Please confirm you meet this requirement.**

The Offeror shall have a dedicated customer service representative(s) for the resulting Master Agreement. The representative shall be available to respond to all Participating Entity inquiries

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within two (2) business day. The representative shall be available to resolve any customer service issues. **Please confirm you meet this requirement.**

The Offeror shall report Key Performance Indicators (KPIs) measuring their customer service and response time. The KPI report shall be issued to the RFP Contract Administrator no later than sixty (60) days following the end of each calendar year. **Please confirm you meet this requirement**

A Contractor representative(s) shall attend an annual meeting with the Lead State Contract Administrator and sourcing team to review usage and discuss any issues that are occurring, if requested. The Contractor shall be prepared to discuss overall effectiveness of contract, total sales, and customer service. The representative shall be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required. **Please confirm you meet this requirement**

- D. Using Entities may have different agencies, departments, or divisions utilizing the goods and/or services provided by Offeror(s). Therefore, Offeror(s) shall be able to process multiple individual accounts and unique users within a Purchasing Entity. **Please confirm you meet this requirement**
- E. Offeror shall accept mailed and electronic payments/P-Cards and cannot charge additional transaction fees under this Master Agreement. Offeror shall accept each Participating Entity's payment terms established in their Participating Addendum. **Please confirm you meet this requirement.**
- F. Offeror shall agree to continue recruiting dealers to become Approved Distributors for Participating Entities for the duration of the Master Agreement. Offeror shall further agree to continue outreach with regards to the training of Approved Distributors on the terms and requirements of the Master Agreement and relaying billing procedures for each respective Participating Entity. **Please confirm you meet this requirement.**

2. Response to Technical Criteria

A. Experience, skills & qualifications

- 1. Provide evidence of your customers' satisfaction with your product or services.
 - a. Client retention rate during the past 3 years.
 - b. Customer surveys.
 - c. Vendor performance ratings.
- 2. Provide a brief history of your company.
- 3. Describe your company's growth during the past three years.
- 4. Describe your company's experience performing the same or similar Scope of Work or providing the same or similar Deliverables to other public sector customers.
- 5. Offeror shall demonstrate that it has the experience providing the same types of goods and/or services specific to governmental entities.
- 6. Letters of reference from three (3) previous public sector clients knowledgeable of the Offeror's performance in providing goods and/or services described in this RFP and a contact person, telephone number, and email address for each reference.
- 7. Describe your company's experience working with contracting cooperatives.

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B. Scope of Work

1. Describe your plan for meeting the Master Agreement Objectives identified in Attachment 2, Scope of Work.
2. Provide evidence of your ability to provide the Deliverables identified in the Scope of Work.
3. Describe your plan to meet Contractor Responsibilities and Tasks identified in the Scope of Work.

C. Service Area & Availability of Products

1. Describe the process, policies, or procedures used by the manufacturer to mitigate risks of running short of the materials needed to product the tires required to meet the need of the states participating in the NASPO ValuePoint Master Agreement.
2. How does the manufacturer and/or distributor determine regularly stocked items?
3. Describe the process and availability of non-stocked items at an Authorized Dealer.
4. Describe the manufacturer's ability to sell and service tires and tubes to the Participating States. The Offeror shall provide a list of sales and service within each Participating State. The list shall be sorted by city and state. The Offeror's list of Authorized Dealers with each state shall include location address, phone number, and provided services. Describe any geographic concerns; ability to service entire state.
5. Describe your ordering process and methods of order submission, including any online system through which Purchasing Entities can place and track Orders.
6. Describe your ability to support a decentralized system of Orders submitted from many end users in multiple states and locations.
7. Describe your return policy.

D. Education & Compliance of Approved Dealers

1. How does the manufacturer educate their Authorized Dealers about a cooperative contract?
2. Describe how a price increase is communicated to your Authorized Dealers.
3. Describe how the manufacturer shall ensure that all Authorized Dealers comply with the terms of the Master Agreement with regards to liability insurance requirements and warranty issues.
4. Describe how a Distributor responds to tire availability, deliver, and pricing discrepancies.

E. Customer Service

1. Offeror shall provide its hours of operation and when key account people shall be available to discuss contract, issues, or problems.
2. Offeror shall provide the names and responsibilities for each member on their government account team.
3. Offer shall describe how problem identification and resolution shall be handled at the manufacturer level and distributor level.

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4. Offeror shall explain how it shall service its account and describe the system it shall use to manage its account.
5. Offeror shall describe how it assesses customer satisfaction.
6. Offeror shall explain its quality assurance measures and how they are handled in its organization and Distributors.

F. Emergency Response and Roadside Assistance

1. Describe your company's emergency response and roadside assistance program?

G. Promotion of the NASPO ValuePoint Master Agreement

1. Describe your company's experience working with contracting cooperatives.
2. List the cooperatives through which you currently have a contract, and provide sales volume information for each. Identify any restrictions on pricing and sales imposed by your other cooperative contracts.
3. Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.
4. Describe how you intend to encourage usage of your Master Agreement by Purchasing Entities.
5. Describe your approach to negotiation of Participating Addenda. Describe the extent to which you provide Participating Entities flexibility in incorporating entity-specific language into their Participating Addenda (e.g., Do you require entities to provide statutory citations for their entity-specific language? Are you able to devote resources to simultaneous negotiation of multiple Participating Addenda?).

H. Green Initiative

1. Describe your company's experience with research and development for environmentally preferred products.

I. Government Employee Discount

1. If available, describe your company's program to provide a discount for government employees.

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Tab 2 - Service Rates Price List

Instructions: Enter your fixed pricing for each of the services listed below in Columns D through M. If any service listed is not provided, then enter NA. Offeror shall list a percentage off current manufacturer's list price for parts. The Offeror may propose a labor rate for each State for Alignment Services. (If applicable, Offeror shall provide information in Tab 4 Multi-State Alignment Hourly Labor Rate). The Offeror may propose a tire disposal fee for each state. (If applicable, Offeror shall provide information in Tab 5 Multi-State Tire Disposal).

OFFEROR NAME:

PRICE LIST NAME:

PRICE LIST DATE:

NASPO ValuePoint Pricing for Services													
Type of Service		Product Category	Sub-1 & 2	Product Sub-Category #3	Product Sub-Category #4		Product Sub-Category #5	Product Category	Sub-#6	Product Sub-Category #7	Product Sub-Category #8	Product Sub-Category #9	Product Sub-Category #10
		Pursuit, Performance, Passenger, Automobile		Light Duty Trucks	Medium Commercial/ Heavy Duty/Bus		Off Road	Agriculture/Farm	Industrial	Specialty	EV Tires	Retread	
				Single	Dual								
1	Tire Installation w/purchase in store includes dismount of used tires and tubes												
2	Change tire, dismount and mount												
3	Flat Repair, remove, repair and mount												
4	Flat repair, off vehicle												
5	Rotate mounted tires (per tire)												
6	New valve stem rubber or metal (per tire)												
7	Wheel balance-computer spin balance (Per Tire)												
8	Wheel balance/Valve stem combo (per tire)												
9	Alignment services (Minor parts shall be included in the pricing of the individual services below.)												
	9a. Standard two wheel alignment												
	9b. Four wheel alignment												
	9c. Bushing/cam alignment												
10	Studding (per tire) - To be performed on new tires only.												

OFFEROR NAME:

PRICE LIST NAME:

PRICE LIST DATE:

NASPO ValuePoint Pricing for Services													
Type of Service		Product Category	Sub-1 & 2	Product Sub-Category #3	Product Sub-Category #4		Product Sub-Category #5	Product Category	Sub-#6	Product Sub-Category #7	Product Sub-Category #8	Product Sub-Category #9	Product Sub-Category #10
		Pursuit, Performance, Passenger, Automobile	Light Duty Trucks	Medium Commercial/ Heavy Duty/Bus		Off Road	Agriculture/Farm	Industrial	Specialty	EV Tires	Retread		
11	Siping (per tire)												
12	Used tire recycle/disposal fee (per tire)												
13	Bulk tire disposal (min. of six tons capacity)												
14	Tire pressure monitoring kit (per Tire)												



Attachment 10

PROPOSED MODIFICATIONS TO SAMPLE MASTER AGREEMENT

The Lead State may, but is not obligated to, consider proposed modifications to Attachment 4, Sample Master Agreement.

Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.

Offeror-specific modifications to the Sample Master Agreement may be proposed as part of Offeror's proposal in this attachment but are **strongly discouraged**. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.

Offeror's Proposed Modifications. (Check one of the below.)

- ☐ Offeror has no proposed modifications to Attachment 4, Sample Master Agreement.
- ☐ Offeror proposes the modifications set forth in the table below and **will submit with Offeror's proposal a redlined copy of Attachment 4, Sample Master Agreement** incorporating each proposed modification. Offeror understands, acknowledges, and agrees to comply with the following:
 - The following will not be considered by the Lead State:
 - Any proposed modification not submitted in this attachment;
 - Any proposed modification not accompanied by an explanation as required in this attachment;
 - Any proposed modification not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal; and
 - Any proposed modification merely referencing another document or a URL.
 - Offerors may propose additional terms but must include them in this attachment and must clearly identify where any terms conflict with the Sample Master Agreement.
 - If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment 4, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.
 - Each of the following fields **must** be completed for each proposed modification to the Sample Master Agreement:
 - **Sample Master Agreement Section Reference:** The page, section, or paragraph in the Sample Master Agreement that is the subject of Offeror's proposed modification.
 - **Sample Master Agreement Language:** The language in the Sample Master Agreement that the Offeror is proposing to modify.
 - **Proposed Changes and Alternate Language:** The Offeror's proposed changes to the Sample Master Agreement language including, if applicable, Offeror's proposed alternate language.
 - **Justification for Proposed Change:** Offeror's justification for the proposed change.

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- **Risk and Benefits of Acceptance:** Offeror's analysis of the risk and benefits to the Lead State, Participating Entities, or Purchasing Entities—including quantifiable costs or cost savings—if Offeror's proposed change is accepted by the Lead State.

Sample Master Agreement Section Reference	Sample Master Agreement Language	Proposed Changes and Alternate Language	Justification for Proposed Change	Risk and Benefits of Acceptance

[Add additional rows as needed.]



Attachment 11 CLAIM OF BUSINESS CONFIDENTIALITY

Offeror's Claims of Business Confidentiality. (Check one of the below.)

- ☐ Offeror is not claiming any information within Offeror's proposal as confidential, proprietary, or protected. (Check box and skip to SIGNATURE section below.)
- ☐ Offeror claims the information set forth in the table below as confidential, proprietary, or protected and **will submit with Offeror's proposal a redacted copy of Offeror's proposal**, which must be clearly marked as such. Offeror understands, acknowledges, and agrees to comply with the following:
 - Each of the following fields **must** be completed for each claim asserted by Offeror:
 - **Proposal Section Reference:** The page, section, or paragraph in Offeror's proposal containing the information claimed to be confidential, proprietary, or protected.
 - **Confidential Information:** A description of the information claimed to be confidential, proprietary, or protected.

Basis for Claim: The basis for Offeror's claim, which in accordance with the State of Iowa's code chapter 22 shall be one of the following:

- An Offeror requesting confidential treatment of specific information shall: (1) conspicuously mark the outside of its Bid as containing confidential information, (2) mark each page upon which the Offeror believes confidential information appears and **CLEARLY IDENTIFY EACH ITEM for which confidential treatment is requested; MARKING A PAGE IN THE PAGE MARGIN IS NOT SUFFICIENT IDENTIFICATION**, and (3) submit a "Public Copy" from which the confidential information has been excised.
- Form 22 will not be considered fully complete unless, for each confidentiality request, the Offeror: (1) enumerates the specific grounds in Iowa Code Chapter 22 or other applicable law that supports treatment of the information as confidential, (2) justifies why the information should be maintained in confidence, (3) explains why disclosure of the information would not be in the best interest of the public, and (4) sets forth the name, address, telephone, and e-mail for the person authorized by Bidder to respond to inquiries by the Agency concerning the confidential status of such information.
- **The Public Copy from which confidential information has been excised is in addition to the confidential copy.** The confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the Bid as possible.
- **Failure to request information be treated as confidential as specified herein shall relieve Agency and State personnel from any responsibility for maintaining the information in confidence. Offerors may not request confidential treatment with respect to pricing information. An Offeror's request for confidentiality that does not comply with this form or an Offeror's request for confidentiality on information or material that cannot be held in confidence as set forth herein are grounds for rejecting the Bid as non-responsive. Requests to maintain an entire Bid as confidential will be rejected as non-responsive.**

**REQUEST FOR PROPOSALS FOR
TIRES, TUBES, AND SERVICES**

Issued by the **State of Iowa**
Solicitation Number RFP0222005113



- If Lead State receives a request for information that Offeror has marked as confidential and if a judicial or administrative proceeding is initiated to compel the release of such information, Offeror shall, at its sole expense, appear in such action and defend its request for confidentiality. If Offeror fails to do so, Lead State may release the information or material with or without providing advance notice to Offeror and with or without affording Bidder the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction. Additionally, if Offeror fails to comply with the request process set forth herein, if Offeror's request for confidentiality is unreasonable, or if offeror rescinds its request for confidential treatment, Lead State may release such information or material with or without providing advance notice to Offeror and with or without affording Offeror the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.
- **Explanation:** Explanation of how the information claimed to be confidential meets the definition of one of the bases above.
- **Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected.**

Proposal Section Reference	Confidential Information	Basis for Claim	Explanation

[Add additional rows as needed.]

**REQUEST FOR PROPOSALS FOR
TIRES, TUBES, AND SERVICES**

Issued by the **State of Iowa**
Solicitation Number RFP0222005113



SIGNATURE

By signing below, the undersigned certifies under penalty of perjury that the representations made and the information provided herein are true and correct and may be relied upon by the Lead State for purposes of determining the validity of Offeror's claim(s). Offeror understands that submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. Offeror further agrees that if Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

OFFEROR:

Signature

Date

Printed Name

Title

Email Address

Phone Number



Tires, Tubes, and Services

The purpose of this RFP is to solicit competitive proposals from eligible offerors capable of providing tire products & services through retail distribution networks to all NASPO Participating States.

Open	7/27/2023 9:00 AM CDT	Type	Request for Proposal
Close	9/13/2023 3:00 PM CDT	Number	RFP0223005113
		Currency	US Dollar

Sealed Until 9/13/2023 3:00 PM CDT

Contacts

David Kundid

david.kundid@iowa.gov

Phone +1 515-745-2796

Commodity Codes

Commodity Code	Description
86305	Tires and Tubes, Passenger Vehicles
86300	TIRES AND TUBES, INCLUDING RECAPPED AND RETREADED TIRES
86307	Tires and Tubes, Light Trucks
86310	Tires and Tubes, Medium Truck and Bus
86315	Tires and Tubes, Off-Road Equipment
86320	Tires and Tubes, Farm Tractor and Implement
86325	Tires and Tubes, Industrial
86330	Tires and Tubes, Misc. (Not Otherwise Classified)
86365	Recapped and Retreaded Tires (See Class 928 if Recapping and Retreading Own Tires as a Service)
99893	Tires and Tubes, Including Retreading Material and Equipment, Sale of Surplus and Obsolete Items

Description

It is advised to "Save Progress" often and especially after uploading documents.

NOTE: Anytime the Respondent opens their bid after the initial submission, they MUST certify and resubmit. No information will be lost from the initial submission.

NOTE: Respondent must approve and resubmit their bid after an amendment has been posted by the Issuing Officer. If the bid was submitted before the amendment, all information will be saved. The Respondent only needs to read and acknowledge the amendment.

Instructions for Amendments: Answer the newly posted question in the Questions Section, and CERTIFY and SUBMIT your proposal again (if previously submitted).

NASPO ValuePoint Background Information

NASPO ValuePoint is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org and www.naspo.org.

Contract Term

The term of the contract will begin April 1, 2024 and end on March 31, 2027.

The Agency shall have the sole option to renew the contract upon the same or more favorable terms and conditions for up to three (3) annual extensions. The resulting contract will be available to all NASPO ValuePoint Participating States.

Optional Pre--Proposal Conference

Offerors shall attend virtually via Google Meets. To participate virtually, contact David Kundid (david.kundid@iowa.gov) for Google Meets information.

Prerequisites

- ★ 1. Respondent shall read and make certifications of their Proposal.
- ★ 2. Respondent shall read and authorize to release information for their Proposal.

Buyer Attachments

1. [00 - RFP Summary.pdf](#)
2. [01 - RFP Terms and Conditions.pdf](#)
3. [02 - Scope of Work.pdf](#)
4. [03 - RFP Evaluation Plan.pdf](#)
5. [04 - Sample Master Agreement.pdf](#)
6. [05 - Potential Participation.pdf](#)
7. [06 - Protest Information.pdf](#)
8. [07 - Offeror Information, Acknowledgements, and Certifications.pdf](#)
9. [08 - Offeror Response Worksheet.pdf](#)
- 1
0. [09 - Cost Proposal.xlsx](#)
- 1
1. [10 - Proposed Modifications to Sample Master Agreement.pdf](#)
- 1
2. [11 - Claim of Business Confidentiality.pdf](#)

Questions

★ Required Questions

Group 1:

Instructions:

- | | | |
|-----|--|---|
| 1.1 | Confidential Treatment of Information - Is Respondent requesting confidential treatment of specific information? | ★ |
| 1.2 | Respondent must attach separate Technical Proposal file. | ★ |
| 1.3 | Respondent must attach separate Cost Proposal file. | ★ |



Trotter, Craig <craig.trotter@iowa.gov>

Intent to Award - RFP0223005113

1 message

Trotter, Craig <craig.trotter@iowa.gov>

Wed, Dec 13, 2023 at 9:12 AM

[REDACTED]

Solicitation Number and Title: RFP0223005113; Tires, Tubes, and Services

The following vendors submitted responses to the above solicitation:

Bridgestone Americas Tire Operations
Continental Tire, The Americas LLC
Goodyear Tire & Rubber Company
Michelin North America, Inc.

Responses were evaluated according to the criteria stated in the solicitation. The State of Iowa – (Department of Administrative Services) announces the intent to award to:

Bridgestone Americas Tire Operations
Continental Tire, The Americas LLC
Goodyear Tire & Rubber Company
Michelin North America, Inc.

We would like to thank each vendor for your time and efforts in preparing a response to this solicitation. This Notice of Intent to Award is subject to execution of the written contract and, as a result, this notice does NOT constitute the formation of a contract between the State of Iowa and the successful respondent. If the apparent successful respondent fails to negotiate and deliver an executed contract, the State, at its sole discretion, may cancel the notice of intent to award and award the contract to the next ranked respondent or withdraw the solicitation. The State of Iowa reserves the right to cancel the award at any time prior to the execution of the written contract.

See attached scoring summary. If there are any other questions or comments, please direct all communications to the Purchasing Agent listed below.

We appreciate your interest in doing business with the State of Iowa (Iowa Department of Administrative Services).

Craig Trotter, CPM
Purchasing Agent III
Central Procurement, Fleet and Print Services Enterprise
Iowa Department of Administrative Services
Hoover Building, 1305 E Walnut, Des Moines, IA 50319
515-322-8593 mobile
craig.trotter@iowa.gov
<https://das.iowa.gov>



**Department of
Administrative Services**

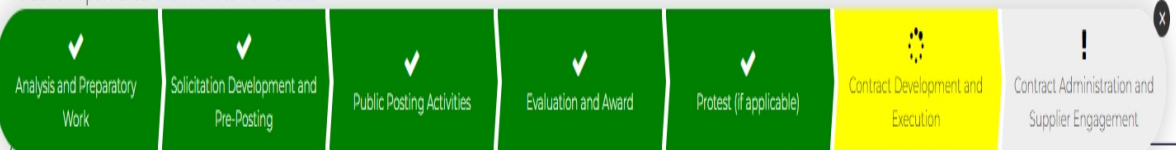


Total Score Comparison to RFP0223005113 - Tires, Tubes, and Service.xlsx
11K

Tires, Tubes and Services

The Portfolio Action Tracker (PAT) is a transparency tool that can be used to monitor and review the real-time status of NASPO

ValuePoint portfolios. [Click here to view Status](#)



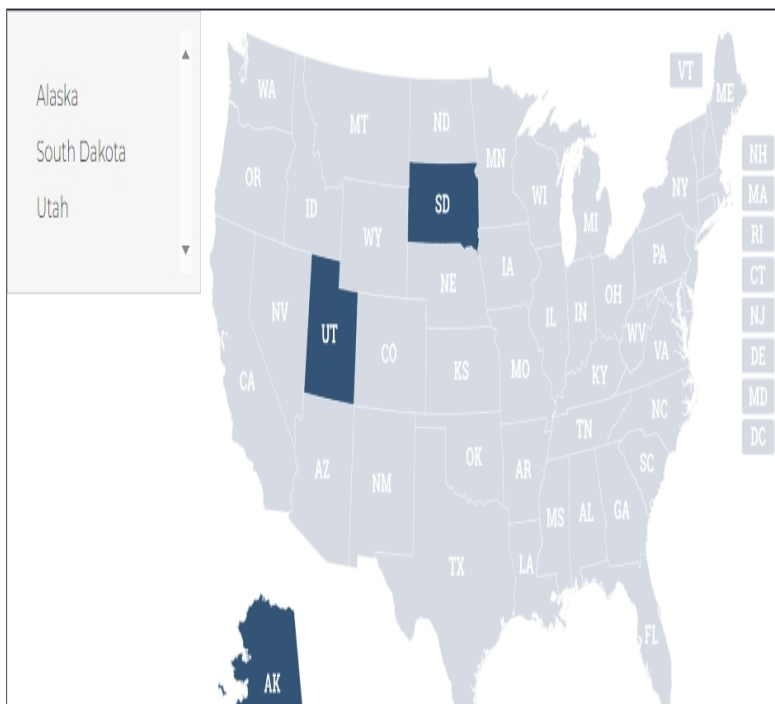
The awards for the new Tires portfolio are currently being negotiated. The Lead State has posted its intent to award to the following suppliers:

- Bridgestone
- Continental
- Goodyear
- Michelin

The tentative contract start date is planned for 7/1/2024.

Iowa	Craig Trotter craig.trotter@iowa.gov 515-322-8593
Awarded:	07/01/2024
Expiration:	06/30/2027
Renewals Limit:	06/30/2030

Participating Addenda (3)



NASPO Resources

Cooperative Portfolio Managers

Primary Contact	Josh Descoteaux
Secondary Contact	Tia Snyder

Documents/Details

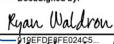
Portfolio Information	+
Solicitation	+

Iowa Department of Administrative Services
Contracts Declaration & Execution Page

Title of Contract: Tires, Tubes, and Services		Bid Proposal Number RFP0223005113	Contract Number 24155
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:			
State Agency's Name: Iowa Department of Administrative Services (DAS)			
Contractor's Name: Goodyear Tire & Rubber Company			
Contract to Begin: July 1, 2024	Date of Expiration: June 30, 2027	Annual Extensions: Three (3)	
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: Section 1 – NASPO Valuepoint Terms and ConditionsPage 2 Section 2 – Scope of Work.....Page 26 Section 3 – Pricing.....Page 34 Section 4 – ContactsPage 37 Attachment 1 - Approved Distributor (Dealer) Agreement.....Page 38 Attachment 2 – Warranty.....Page 41			

Warranty

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto:

DocuSigned by:  By (Authorized Signature)		Contractor: Goodyear Tire & Rubber Company	
Ryan Waldron Printed Name and Title of Person Signing		President, North America Consumer	Date Signed 4/9/2024
200 Innovation Way Akron, Ohio 44316 Address			

State of Iowa: Department of Administrative Services – Central Procurement

By (Authorized Signature) 		Date Signed April 10, 2024
Printed Name and Title of Person Signing Karl Wendt, Procurement Manager		
Address 1305 E Walnut ST, Des Moines, IA 50319		

SECTION 1

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

1.1 Definitions

- 1.1.1 Acceptance** means acceptance of goods and services as set forth in Section 1.9 of this Master Agreement.
- 1.1.2 Authorized Dealer** means any independent, third-party dealer authorized by Contractor to sell products and /or provide services under this Master Agreement.
- 1.1.3 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.1.4 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.1.5 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.1.6 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.1.7 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.1.8 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.1.9 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.1.10 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity- specific language or other requirements (e.g., ordering

procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.1.11 Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.1.12 Participating State means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.1.13 Product or Products and Services means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.1.14 Purchasing Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

1.2 Term of Master Agreement

1.2.1 Initial Term

The initial term of this Master Agreement is for three (3) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional one-year terms at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

1.2.2 Amendment Limitations

The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

1.2.3 Amendment Term

The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

1.3 Pricing, Payment & Leasing

1.3.1 Pricing

The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

1.3.1.1 All prices and rates must be guaranteed for the initial six (6) month term of the Master Agreement.

1.3.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least six (6) months prior to the effective date.

1.3.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

1.3.1.4 No retroactive adjustments to prices or rates will be allowed.

1.3.2 Payment

Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within sixty (60) days following the date the goods are delivered or the date a correct invoice is received, whichever is later. After sixty (60) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

1.3.3 Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

1.4 Ordering**1.4.1 Order Numbers**

Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

1.4.2 Quotes

Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing.

This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

1.4.3 Applicable Rules

Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

1.4.4 Required Documentation

Contractor must not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

1.4.5 Term of Purchase

Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

1.4.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

1.4.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

1.4.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

1.4.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor must perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor must not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

1.4.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

1.4.6 Order Form Requirements

All Orders pursuant to this Master Agreement, at a minimum, must include:

- 1.4.6.1** The services or supplies being delivered;
- 1.4.6.2** A shipping address and other delivery requirements, if any;
- 1.4.6.3** A billing address;
- 1.4.6.4** Purchasing Entity contact information;
- 1.4.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 1.4.6.6** A not-to-exceed total for the products or services being ordered; and
- 1.4.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

1.4.7 Communication

All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

1.4.8 Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

1.5 Order of Precedence

1.5.1 Order

Any Order placed under this Master Agreement will consist of the following documents:

- 1.5.1.1** A Participating Entity's Participating Addendum ("PA");
- 1.5.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
- 1.5.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
- 1.5.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

1.5.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

1.5.2 Conflict

These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

1.5.3 Participating Addenda

Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

1.6 Participants and Scope

1.6.1 Requirement for a Participating Addendum

Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

1.6.2 Applicability of Master Agreement

NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

1.6.3 Authorized Use

Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

1.6.4 Obligated Entities

Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those

Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

1.6.5 Notice of Participating Addendum

Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

1.6.6 Eligibility for a Participating Addendum

Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

1.6.7 Prohibition on Resale

Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

1.6.8 Individual Customers

Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

1.6.9 Release of Information

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

1.6.10 No Representations

The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

1.7 NASPO ValuePoint Provisions**1.7.1 Applicability**

NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section 1.5 are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

1.7.2 Administrative Fees**1.7.2.1 NASPO ValuePoint Fee**

Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

1.7.2.2 State Imposed Fees

Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

1.7.3 NASPO ValuePoint Summary and Detailed Usage Reports**1.7.3.1 Sales Data Reporting**

In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by

NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

1.7.3.2 Summary Sales Data

“Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

1.7.3.3 Detailed Sales Data

“Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

1.7.3.4 Sales Data Crosswalks

Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Contractor’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.

1.7.3.5 Executive Summary

Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or

implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

1.7.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

1.7.4.1 Staff Education

Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

1.7.4.2 Onboarding Plan

Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

1.7.4.3 Annual Contract Performance Review

Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

1.7.4.4 Use of NASPO ValuePoint Logo

The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

1.7.4.5 Obligation to Act in Good Faith

The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section 1.7. Nothing in this Section 1.7.4.5 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers."

1.7.5 Cancellation

In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

1.7.6 Canadian Participation

Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

1.7.7 Additional Agreement with NASPO

Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

1.8 Shipping and Delivery**1.8.1 Shipping Terms**

All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

1.8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

1.8.2 Minimum Shipping

The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

1.8.3 Inside Deliveries

To the extent applicable, all deliveries will be “Inside Deliveries” as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor’s carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

1.8.4 Packaging

All products must be delivered in the manufacturer’s standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity’s Purchase Order number.

1.9 Inspection and Acceptance

1.9.1 Laws and Regulations

Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

1.9.2 Applicability

Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 1.9 will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

1.9.3 Inspection

All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

1.9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

1.9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

1.9.4 Failure to Conform

If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract

requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

1.9.5 Acceptance Testing

Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

1.9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

1.9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

1.9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

1.9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

1.9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

1.10 Warranty

1.10.1 Applicability

Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

1.10.2 Warranty

The terms, conditions and limitations of Contractor's applicable limited warranties for new and retread tire products, as in effect from time to time and attached hereto as Attachment 2.

Purchasing Entities in connection with the Master Agreement. CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRODUCTS, WITHOUT

LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.

1.11 Product Title

1.11.1 Conveyance of Title

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

1.11.2 Embedded Software

Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

1.11.3 License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

1.12 Indemnification

1.12.1 General Indemnification

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or volunteers, at any tier, relating to performance under this Master Agreement.

For the avoidance of doubt and notwithstanding anything to the contrary herein, all parties to this Master Agreement or a Participating Addendum acknowledge that: (i) Contractor may provide the Products or services through its Authorized Dealers and (ii) all Authorized Dealers shall be directly and fully responsible (without any contribution from Contractor or its employees) to the Lead State, Participating Entities and Purchasing Entities for any liabilities, negligence, insurance requirements, wrongful acts or warranties directly related to performance of the Authorized Dealers under this Master Agreement. All Authorized Dealers will execute an Approved Distributor (Dealer) Agreement, attached as Attachment 1. Failure to enforce an Approved Distributor (Dealer) Agreement when such Authorized Dealer does not abide by its indemnification

requirements shall qualify as an event of default on this Master Agreement under Section 1.14.8.

1.12.2 Intellectual Property Indemnification

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

1.12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

1.12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

1.12.2.1.2 specified by the Contractor to work with the Product;

1.12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

1.12.2.1.4 reasonably expected to be used in combination with the Product.

1.12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

1.12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

1.12.2.4 Unless otherwise set forth herein, Section 1.12 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

1.13 Insurance

1.13.1 Term

Contractor shall, during the term of this Master Agreement, self-insure or maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

1.13.2 Class

Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

1.13.3 Coverage

Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

1.13.3.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;

1.13.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

1.13.4 Notice of Cancellation

Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of cancellation or nonrenewal of such policy or is first aware that cancellation is threatened.

1.13.5 Notice of Endorsement

Prior to commencement of performance and to the extent not self-insured, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

1.13.6 Participating Entities

Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section 1.13, except the endorsement is provided to the applicable Participating State or Participating Entity.

1.13.7 Furnishing of Certificates

To the extent not self-insured, Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

1.13.8 Disclaimer

Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

1.14 General Provisions**1.14.1 Records Administration and Audit**

1.14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

1.14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

1.14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit

contract obligations and that permits the Lead State to review compliance with those obligations.

1.14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

1.14.2.1 Confidentiality

Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

1.14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

1.14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

1.14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

1.14.2.2 Non-Disclosure

Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

1.14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

1.14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

1.14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

1.14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

1.14.2.3 Injunctive Relief

Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

1.14.2.4 Purchasing Entity Law

These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

1.14.2.5 NASPO ValuePoint

The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the

entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

1.14.2.6 Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

1.14.3 Assignment/Subcontracts

1.14.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

1.14.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

1.14.4 Changes in Contractor Representation

The Contractor must use commercially reasonable efforts, to promptly notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

1.14.5 Independent Contractor

Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

1.14.6 Cancellation

Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

1.14.7 Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by strike or labor disruption, epidemic or pandemic, fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

1.14.8 Defaults and Remedies

1.14.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

1.14.8.1.1 Nonperformance of contractual requirements;

1.14.8.1.2 A material breach of any term or condition of this Master Agreement;

1.14.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

1.14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

1.14.8.1.5 Any default specified in another section of this Master Agreement.

1.14.8.1.6 Failure to enforce an Approved Distributor (Dealer) Agreement under Section 1.12.1.

1.14.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

1.14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

1.14.8.3.1 Any remedy provided by law;

1.14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

1.14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;

1.14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;

1.14.8.3.5 Suspension of Contractor's performance; and

1.14.8.3.6 Withholding of payment until the default is remedied.

1.14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

1.14.9 Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

1.14.10 Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from

participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

1.14.11 No Waiver of Sovereign Immunity

1.14.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

1.14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

1.14.12 Governing Law and Venue

1.14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

1.14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

1.14.12.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

1.14.13 Survivability

Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

SECTION 2 SCOPE OF WORK

- 2.1** This Scope of Work describes the Deliverables being sought through this Contract. Deliverables shall include specific full lines of tires and tubes identified in the Manufacturer's Price List (MPL) and related services.

2.2 Master Agreement Objectives

The purpose of this Master Agreement(s) is to provide competitive pricing for tire products and services through retail distribution networks to all Participating States.

This Master Agreement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the using entities chief procurement official and compliance with local statutory and regulatory provisions.

2.3 Master Agreement Deliverables

The scope of this Contract includes specific full lines of tires and tubes as covered in the Manufacturer's Price List (MPL) and related services in the subcategories listed below.

2.3.1 Tires and Tubes Subcategories

1. Pursuit and Performance Tires
2. Automobile/Passenger Vehicles
3. Light Duty Trucks: Radial and Bias
4. Medium Commercial/Heavy Duty Trucks/Buses
5. Off-the-Road OTR: Radial and Bias
6. Agriculture/Farm
7. Industrial
8. Specialty Tires
9. EV Tires
10. Retread

2.3.2 Product and Service Specifications

2.3.2.1 General Tire Specifications

The quality for all tires must be the equivalent or greater than Original Equipment Manufacturers (OEM) as original for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tires supplied must be marked with Federal Department of Transportation (DOT) compliance symbol. Tires must conform to all applicable Federal Specifications.

All tires in subcategories one (1) through nine (9) must be new, unused and must have been produced or manufacturer within the last one (1) year prior to delivery to the Purchasing Entity. Should an Authorized Dealer deliver a tire(s) with a manufacturing date exceeding the one (1) year limit, the Authorized Dealer must pick up the expired tire(s) and replace them with tire(s) that meet

the manufacturing date requirement for no additional fee to the Purchasing Entity.

All tires must have the size, manufacturer's name, DOT number, serial number, and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. must not be acceptable.

Tires offered must have been tested to meet or exceed American Society of Testing and Materials (ASTM) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operations performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers.

2.3.2.1.1 Pursuit and Performance Tires

Pursuit and performance tires include tires for police and other pursuit vehicles and for other high-speed, performance vehicles. This subcategory includes any tire that is H, V, W, Y, or ZR rated or above. An H rating is the minimum speed rating for tires in this subcategory.

Tires must be new, standard production tires expressly designed and certified by manufacturer for high speed operation and must exhibit exceptional safety, stability, handling, and stopping characteristics. Contractor must maintain evidence/certifications that such tires meet all laboratory test and size requirements of Federal Standards MVSS 109.

2.3.2.1.2 Automobile/Passenger Vehicles

These tires include common passenger car tires and are designated with a "P" at the beginning of the tire size. Common applications for these types of tires would be passenger cars and minivans.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.3 Light Duty Trucks Radial and Bias

These tires can usually be identified by the letters "LT" at the beginning of the tire size. Common applications for these types of tires would be pickup trucks, sport utility vehicles, full size vans, and some trailers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.4 Medium Commercial/Heavy Duty Trucks/Buses

These tires do not have a letter at the beginning of the tire size. Common applications for these types of tires would be medium and heavy trucks, buses, semi-trucks, cargo, vans, and trailer tires. Tires in this subcategory have a diameter that is equal to or greater than twenty (20) inches. Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.5 Off-the-Road OTR and Low Speed Off Highway Tires (Radial and Bias)

Common applications are heavy construction equipment such as wheel loaders, backhoes, graders, and trenchers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.6 Agricultural/Farm (Radial and Bias)

Common applications are farm tractors, wagons, harvesters, and other farm implements requiring tires with high traction qualities and tires with high flotation qualities at low inflation pressures.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.7 Industrial

Common applications are specialty industrial equipment, some construction equipment, and material handling equipment such as skid loaders and forklifts and include pneumatic, nonpneumatic, and press on tires.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.8 Specialty Tires

Specialty tires may include, but are not limited to, recreational, all-terrain-vehicle (ATV), boat trailer, yard and garden, and aviation tires. This category also includes all other tires not identified above.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.9 Electric Vehicle (EV) Tires

Common applications are electric sedans and trucks requiring tires with high load index.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.10 Retread Tires – Optional Service

A retread tire undergoes a manufacturing process to replace the worn tread on used tires to extend the longevity of the tire.

2.3.2.2 Low Roll Resistance Tires

Contractor must provide certified, low rolling resistance tires and identify them as low roll resistance tires in the MPL. Contractor is to also provide the fuel economy rating of the low roll resistance tires offered, for example, miles per gallon fuel efficiency increase or percentage of fuel economy increase.

2.3.2.3 Tubes

All inner tubes must be standard production first line, heavy duty butyl tubes or natural rubber of fresh stock. All tubes must be of quality not less than the tubes normally furnished in representative quantities by OEM as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tubes must conform to all applicable federal specifications. All tubes must be new and must have been produced or manufactured within the last one (1) year prior to installation or delivery to the Purchasing Entity.

2.3.2.4 Detailed Services Specifications

Contractor must provide pricing on each of the below mentioned listed services that may be performed by their approved Authorized Dealers to include any parts and labor. If Contractor does not offer one of the items listed below, the Contractor should mark it as NA. Approved Authorized Dealers must honor the services pricing in the Contractor's Cost Proposal.

Contractor must provide a list of its approved Authorized Dealers for each state included in this Contract. The Contractor is responsible for the timeliness and quality of all services provided by the approved Distributors under this Contract. NASPO ValuePoint Participating States may elect to use these services listed below at their discretion.

Product installation and repairs, such as mounting, rotation, and balancing, must be in accordance with manufacturer's recommended procedures of warranted new virgin-product tires for each product subcategory.

a. Tire installation with purchase in store includes dismount of used tires and tubes

b. Change tire, dismount and mount

- c.** Flat repair, remove, repair and mount
- d.** Flat repair, off vehicle
- e.** Rotate mounted tires (per tire)
- f.** New valve stem rubber or metal
- g.** Wheel balance – computer spin balance (per spin)
- h.** Wheel balance – computer spin balance and valve stem combination
- i.** Foam filled
- j.** Alignment Services – If Contractor provides this service, the prices should be listed as a percentage discount from list price for parts and a fixed price per hour for labor.
- k.** Studding – Metal implants in the surface of the tread to improve traction on ice.
- l.** Siping – The small slots that are cut or molded into a tire tread surface. These slots are meant to aid in increasing traction in snow, ice, mud, and wet road surfaces.
- m.** Used tire recycle and disposal fee (per tire) – Some NASPO ValuePoint Participating States have statutes that only allow up to a specific fee to be charged. The Participating States with statute regulated fee caps will only pay the proposed amount or the statute price, whichever is lower.
- n.** Bulk Disposal of Tires– This is considered an additional chargeable service.

Contractor must, when requested, place trailers on-site at any requesting using Entity for the disposal of scrap tires. Contractor must, on a will-call basis, within five (5) days' notification from requesting Purchasing Entity, remove and replace full trailers with empty trailers. Trailer capacity must be a minimum of six (6) tons or scrap tires. Contractor must dispose of scrap tires that are removed in Contractor provided trailers at an approved waste tire recovery area, other approved disposal methods. Contractor must invoice for disposal of scrap tires at the established Master Agreement price per ton. Contractor must submit with invoice, documentation of scrap tire disposal weight from a disposal site, if this is the method of disposal utilized by the Contractor. Contractor may return scrap tires mounted to wheels to Purchasing Entity if dismounting is required. With prior approval from the designated Purchasing Entity contract representative, Contractor may dismount scrap tires from wheels and invoice at the established Master Agreement price for such service.

Contractor must return wheels to Purchasing Entity for disposition unless instructed otherwise by Purchasing Entity.

o. Tire Pressure Monitoring System (TPMS) – Vehicles all come with a TPMS which is built into the tire valve. When new tires are mounted on a vehicle with the TPMS system, the TPMS system is reinstalled with a new washer, valve, and valve cap (TPMS service kit).

2.3.3 Customer Service

2.3.3.1 The Contractor must provide a website dedicated to any Participating State that includes, but, is not limited to, services, cost, technical specifications, online ordering, and payment capability.

2.3.3.2 The Contractor must provide a dedicated customer service representative(s) for the Master Agreement. The representative must be available to respond to all Participating Entity inquiries within two (2) business day. The representative must be available to resolve any customer service issues.

2.3.3.3 The Contractor must report Key Performance Indicators (KPIs) measuring their customer service and response time. The KPI report must be issued to the Contract Administrator no later than sixty (60) days following the end of each calendar year.

2.3.3.4 A Contractor representative(s) must attend an annual meeting with the Lead State Contract Administrator and sourcing team to review usage and discuss any issues that are occurring, if requested. The Contractor must be prepared to discuss overall effectiveness of contract, total sales, and customer service. The representative must be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required.

2.3.4 Multi-Accounts within a Using Entity

Using Entities may have different agencies, departments, or divisions utilizing the goods and/or services provided by Contractor(s). Therefore, Contractor(s) must be able to process multiple individual accounts and unique users within a Purchasing Entity.

2.3.5 Payment Types

Contractor must accept mailed and electronic payments/P-Cards and cannot charge additional transaction fees under this Master Agreement. Contractor must accept each Participating Entity's payment terms established in their Participating Addendum.

2.3.6 Recruiting and Education of Approved Distributors

Contractor must agree to continue recruiting dealers to become Approved Distributors for Participating Entities for the duration of the Master Agreement. Contractor must further agree to continue outreach with regards to the training of Approved Distributors on the terms and requirements of the Master Agreement and relaying billing procedures for each respective Participating Entity.

2.4 Contractor Responsibilities and Tasks

2.4.1 Administrative Fees

2.4.1.1 The Contractor must pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes and shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the Contract pricing.

2.4.1.2 Additionally, some Participating Entities may require an additional administrative fee be paid directly to the state only on purchases made within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments must be incorporated into the Participating Addendum that is made part of this Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for such purchased made by Purchasing Entities within the jurisdiction of the state. All such payments must not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee must be based on the gross amount of all sales (less any charges for taxes and shipping) at the adjusted prices (if any) in Participating Addenda.

2.4.2 NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor must provide the following NASPO ValuePoint reports.

2.4.2.1 Summary Sales Data – The Contractor must submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at:
<https://calculator.naspovaluepoint.org/>

2.4.2.2 Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating State. Plans must include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

2.4.2.3 Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Participating Entities proposed terms and conditions, as deemed important to the Participating Entity, for possible inclusion into the Participating Addendum. Contractor must ensure that their sales force is aware of this contracting option.

2.4.2.4 Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include

a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of t of administrative fees.

2.4.3 Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial six (6) month period of the Master Agreement. Following the initial six (6) month period of the Master Agreement, the Contractor may request for a price or rate adjustment for an equal guarantee period of six (6) months, and must be made at least sixty (60) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement must not be effective unless approved by the Lead State. No retroactive adjustments to prices or rate must be allowed.

2.5 Lead State Responsibilities and Tasks

2.5.1 Adjustment in Pricing

The Lead State Contract Administrator and Multistate Sourcing Team must review the Contractor's request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead State Contact must notify the Contractor their requested price or rate adjustment was approved or must be resubmitted for approval at least thirty (30) days prior to the effective date.

2.5.2 Contract Extensions

The Lead State Contract Administrator must give the Contractor written notice of its intent whether to exercise each renewal option no later than ninety (90) days before the end of the Contract's then-current term.

2.5.3 Annual Review Meeting

The Lead State Contract Administrator must coordinate a date and time that aligns with the Contractor, Contract Administrator, and Multistate Sourcing Teams schedule for the annual review meeting. The meeting must be held in Des Moines, Iowa.

2.5.4 Participating Addendum Escalation Contact

The Lead State Contract Administrator must be the escalation contact for a Participating Entity when the Contractor fails to respond to correspondence with the Participating Entity or if an issue or problem is not resolved in a timely fashion.

SECTION 3 PRICING

3.1 Tire Pricing

Tire pricing includes all anticipated charges, including but not limited to, freight to dealer locations, cost of product and services, transaction fees, overhead, profits, and other costs or expenses incidental to the Contractor's performance. Tire and Tube pricing does not include delivery to Purchasing Entities. Contractor's discount off of Manufacturer's Price List (MPL) pricing is shown below:

Tires and Tubes by Subcategory				
Subcategory #	Tire and Tube Type	Percent Discount	MPL Name	MP: Date
B1	Pursuit and Performance Tires	52.50%	Goodyear Tire & Rubber Company	1/1/2024
B2	Automobile/Passenger Vehicles	48%	Goodyear Tire & Rubber Company	1/1/2024
B3	Light Duty Trucks:	48%	Goodyear Tire & Rubber Company	1/1/2024
	3a. Radial	48%	Goodyear Tire & Rubber Company	1/1/2024
	3b. Bias	48%	Goodyear Tire & Rubber Company	1/1/2024
B4	Medium Commercial/Heavy Duty Trucks/Buses	60%	Goodyear Tire & Rubber Company	1/1/2024
B5	Off Road	30%	Goodyear Tire & Rubber Company	1/1/2024
	5a. Off Road Radial	30%	Goodyear Tire & Rubber Company	1/1/2024
	5b. Off Road Bias	30%	Goodyear Tire & Rubber Company	1/1/2024
B6	Agriculture/Farm	NA	NA	NA
B7	Industrial Tires	30%	Goodyear Tire & Rubber Company	1/1/2024
B8	Specialty Tires	NA	NA	NA
B9	EV Tires	48%	Goodyear Tire & Rubber Company	1/1/2024
B10	Retread	73%	Goodyear Tire & Rubber Company	1/1/2024

3.2 Tire Services Pricing

Tire services include all minor parts and labor as a total service rate. Flat rate pricing and availability of services is shown below:

Product Code 9	Product Code 9 Desc	Tire Type	Price	NASPO Sub-Category	Type of Service
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	Pursuit, Performance, Passenger, Automobile	Wheel balance-computer spin balance (Per Tire)
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	Light Duty Trucks	Wheel balance-computer spin balance (Per Tire)
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	EV Tires	Wheel balance-computer spin balance (Per Tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	Pursuit, Performance, Passenger, Automobile	New valve stem rubber (per tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	Light Duty Trucks	New valve stem rubber (per tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	EV Tires	New valve stem rubber (per tire)

041270000	GOV NEW VALVE STEM	SV	\$7.95	Pursuit, Performance, Passenger, Automobile	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$7.95	Light Duty Trucks	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$7.95	EV Tires	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Medium Commercial/ Heavy Duty/Bus (Single)	New valve stem (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Medium Commercial/ Heavy Duty/Bus (Dual)	New valve stem (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Retread	New valve stem (per tire)
040476000	GOV AUTO INSTALL-NOT PURCH IN STORE	SV	\$10.15	EV Tires	Change tire, dismount and mount
040476000	GOV AUTO INSTALL-NOT PURCH IN STORE	SV	\$10.15	Pursuit, Performance, Passenger, Automobile	Change tire, dismount and mount
040478000	GOV CHANGE TIRE,DISM & MOUNT-LT (C,D,E)	SV	\$8.00	Light Duty Trucks	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	Pursuit, Performance, Passenger, Automobile	Wheel balance/Rubber Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	Light Duty Trucks	Wheel balance/Rubber Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	EV Tires	Wheel balance/Rubber Valve stem combo (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	Pursuit, Performance, Passenger, Automobile	Rotate mounted tires (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	Light Duty Trucks	Rotate mounted tires (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	EV Tires	Rotate mounted tires (per tire)
040477000	GOV LT TIRE INSTALL-NOT PURCH IN STORE	SV	\$11.80	Light Duty Trucks	Change tire, dismount and mount
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$4.00	Pursuit, Performance, Passenger, Automobile	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$6.00	Light Duty Trucks	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$4.00	EV Tires	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Medium Commercial/ Heavy Duty/Bus (Single)	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Retread	Used tire recycle/disposal fee (per tire)
040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Medium Commercial/ Heavy Duty/Bus (Single)	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Retread	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)

040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Medium Commercial/ Heavy Duty/Bus (Single)	Change tire, dismount and mount
040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Retread	Change tire, dismount and mount
046993000	GOV MED COM INSTALL (DUAL)	SV	\$40.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
046993000	GOV MED COM INSTALL (DUAL)	SV	\$40.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Change tire, dismount and mount
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Medium Commercial/ Heavy Duty/Bus (Single)	Wheel balance-computer spin balance (Per Tire)
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Medium Commercial/ Heavy Duty/Bus (Dual)	Wheel balance-computer spin balance (Per Tire)
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Retread	Wheel balance-computer spin balance (Per Tire)
046996000	GOV WHEEL BALANCE WITH VALVE (DUAL)	SV	\$53.50	Medium Commercial/ Heavy Duty/Bus (Dual)	Wheel balance/Valve stem combo (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Medium Commercial/ Heavy Duty/Bus (Single)	Rotate mounted tires (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Rotate mounted tires (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Retread	Rotate mounted tires (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$53.50	Medium Commercial/ Heavy Duty/Bus (Single)	Wheel balance/Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$53.50	Retread	Wheel balance/Valve stem combo (per tire)
040478000	GOV CHANGE TIRE,DISM & MOUNT-PASS/PURSUIT	SV	\$8.00	EV Tires	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
040478000	GOV CHANGE TIRE,DISM & MOUNT-PASS/PURSUIT	SV	\$8.00	Pursuit, Performance, Passenger, Automobile	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)

3.3 Internal Controls

Contractor has incorporated internal controls based on product code pricing. Contractor shall not bill the Purchasing Entity for product code line items where the billed price is greater than the contract rate based on their internal controls in an effort to keep billing compliant with the Contract.

SECTION 4 CONTACTS

- 4.1 Goodyear**
Kenny Miller
330.796.4352
kenneth_miller@goodyear.com
- 4.2 State of Iowa – DAS/Procurement Contact**
Karl Wendt
515.281.7073
karl.wendt@iowa.gov
- 4.3 NASPO-Valuepoint**
Josh Descoteaux
589.551.0958
jdescoteaux@naspo.org

ATTACHMENT 1**APPROVED DISTRIBUTOR (DEALER) AGREEMENT – [Name of State]****FOR TIRE RELATED SERVICES – RFP1118005083****NASPO ValuePoint Master Agreement 19101**

The State of _____ (State) has entered into a contract with _____ (Manufacturer”) to provide tires and services to the State and political subdivisions within the State resulting from the State of Iowa Request for Proposal 1118005083. Specific independent and/or corporate owed Approved Distributors (“Dealers”) will be authorized by the Manufacturer to provide tires, tubes and tire related services related to purchasing the tires (mounting tires, rotating tires, etc.).

This Dealer Agreement will identify the responsibilities of the Dealer for the services provided by the Dealer. Dealers will need to sign the Approved Distributor (Dealer) Agreement before the Dealer will be authorized to provide services to the State. This Agreement will be effective on the last signature date below.

The Dealer agrees to the following:

1. PROFESSIONAL SERVICES

Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work, if applicable. Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State. Dealer will provide Manufacturer its current delivery pricing and terms, if applicable, and submit updates within a maximum of thirty (30) days of when pricing or terms are adjusted.

2. INSURANCE REQUIREMENTS

The Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

- a. **Liability insurance:** a certificate of insurance evidencing insurance coverage for general liability including contractual liability, written on a comprehensive form with coverage for personal injury and a limit of liability of not less than \$1,000,000 per occurrence for bodily injury, property damage and personal injury; and, \$2,000,000 general aggregate.
- b. **Worker's compensation and employer's liability:** a certificate of insurance evidencing Dealer is complying with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- c. **Garage liability including Garage Keepers Legal Liability:** a certificate evidencing coverage with a minimum limit of \$100,000 and to include loss of use of state operated vehicle(s).

3. HOLD HARMLESS

The Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Dealer, its employees or subcontractors or volunteers.

4. CONTRACT WITH MANUFACTURER

The Dealer agrees to abide by the terms and conditions of the Contract between the Manufacturer and the State resulting from State of Iowa Request for Proposal 1118005083.

IN WITNESS WHEREOF, the authorized representatives of the parties sign and agree to the terms of this Agreement.

Approved Distributor (DEALER)

Signature

Date _____

Name and Title of Signer
(Type or Print)

AUTHORIZED DISTRIBUTOR (DEALER) INFORMATION

Legal Status: **Corporation** † **Partnership** † **Sole Proprietor** †

Dealer Name: _____

Address: _____

City, State, Zip: _____

Phone: _____ **Fax:** _____

Contact Name: _____

Email Address: _____

Federal Tax ID #: _____

☐ **Check this box if you cannot provide any delivery services.**

If you have the capacity to provide delivery services, please enter your delivery rates and any terms associated with delivery.

Delivery Rate(s): _____

Delivery Terms: _____

ATTACHMENT 2

THE GOODYEAR TIRE & RUBBER COMPANY

Goodyear Warranty Information

The Goodyear Tire & Rubber Company
200 Innovation Way
Akron, OH 44316

Please see the attached warranty information for the tires offered from the Goodyear Tire & Rubber Company.

LIMITED WARRANTY, TIRE CARE AND MAINTENANCE GUIDE

Highway Auto Tires
Light Truck Tires
Temporary Spare
Special Trailer (ST) Tires



HIGHWAY AUTO, LIGHT TRUCK AND SPECIAL TRAILER TIRE AND ADJUSTMENT POLICY

(EXCLUDES GOODYEAR® UNISTEEL® RADIAL LIGHT TRUCK TIRES)

WHO IS ELIGIBLE?

You are eligible for the benefits of this Limited Warranty if you meet all the following criteria:

- You are the owner or authorized agent of the owner of new Goodyear highway auto, light truck or special trailer tires.
- Your tires bear Department of Transportation prescribed tire identification numbers
- Your tires have been used only on the vehicle on which they were originally installed according to the vehicle manufacturer's or Goodyear's recommendations
- Your tires were purchased on or after April 1, 2019

Light truck tires are defined as all tires identified with the "LT" designation in the sidewall stamping, e.g. LT245/75R16.

Special Trailer tires are defined as all tires identified with the "ST" designation in the sidewall stamping, e.g. ST235/80R16.

WHAT IS COVERED AND FOR HOW LONG?

FREE TIRE REPLACEMENT

Any new Goodyear highway radial auto, radial light truck tire or Special Trailer (ST) tire, covered by this policy, removed from service due to a covered warranty condition during the first 2/32" of usable tread or twelve months from date of purchase, whichever comes first, will be replaced with a comparable new Goodyear tire at no charge, including mounting and balancing. (Without proof of purchase the date of manufacture will be used to determine eligibility.)

ALL OTHER HIGHWAY AUTO OR LIGHT TRUCK TIRES

Any new Goodyear highway auto or light truck tire, other than radial auto or radial light truck tires, removed from service due to a covered warranty condition during the first 1/32" of usable tread will be replaced with a comparable new Goodyear tire at no charge, including mounting and balancing.

TEMPORARY SPARE TIRES

Any Goodyear temporary spare tire removed from service due to a covered warranty condition during the first 50% of usable treadwear (1/32") will be replaced with a comparable new Goodyear temporary spare tire at no charge, including mounting.

PRORATED ADJUSTMENT

Tires not eligible for free replacement that are removed from service due to a covered warranty condition will be replaced with a comparable new Goodyear tire on a prorated basis for up to six (6) years from the date of original new tire purchase or when the treadwear indicators become visible (worn to 2/32"), whichever occurs first. (Without proof of purchase the date of manufacture will be used to determine eligibility.)

HOW WILL PRORATED CHARGES BE CALCULATED?

Replacement price will be calculated by multiplying the tire's advertised retail selling price at the time of adjustment by the percentage of usable original tread that has been worn off. You pay for mounting and balancing, and an amount equal to the current Federal Excise Tax (F.E.T. – U.S. only) and any other applicable taxes and government-mandated charges.

EXAMPLE: If your disabled tire had an original 8/32" of usable treadwear and is worn to 4/32" usable tread remaining, you have used 50% and therefore must pay 50% of the advertised retail selling price of the comparable tire.

In addition, you must pay an amount equal to the full current Federal Excise Tax (U.S. only) or any other applicable taxes and government-mandated charges for the comparable new replacement tire at the time of adjustment. If the price of the new comparable tire is \$130.00, the cost to you would be \$65.00 plus F.E.T. (U.S. only) plus any other applicable taxes and government-mandated charges.

WHAT IS A COMPARABLE TIRE?

A "comparable" new Goodyear tire will be the same brand tire and may be either the same line of tire or, in the event that the tire is not available, the same brand tire with the same basic construction and similar performance attributes with a different sidewall or tread configuration. If a higher priced tire is accepted as replacement, the difference in price will be at an additional charge to you. Any replacement tire provided pursuant to this warranty will be covered by the warranty in effect at the time of replacement.

ADDITIONAL PROVISIONS

A tire has delivered its full original tread life and the coverage of this limited warranty ends when the treadwear indicators become visible (worn to 2/32") or six (6) years from the date of new tire purchase, whichever occurs first. (Without proof of purchase the date of manufacture will be used to determine eligibility.)

LIMITATIONS

This limited warranty is applicable only in the United States and Canada.

GOODYEAR TREAD LIFE LIMITED WARRANTY

In addition to the provisions of the limited warranty for covered warranty conditions, any new Goodyear replacement tire listed below is warranted against treadwear wear-out based on the following table for up to six (6) years or the mileage indicated, whichever occurs first:

TIRE	U.S. MILES	CANADA KILOMETRES
Assurance® All-Season	65,000	105,000
Assurance ComforTred® Touring (T- and H-speed rated only)	80,000	130,000
Assurance ComforTred® Touring (V-speed rated only)	70,000	110,000
Assurance Fuel Max®	65,000	105,000
Assurance^{CS} Fuel Max®	65,000	105,000
Assurance MaxLife®	85,000	140,000
Assurance WeatherReady®	60,000	95,000
Assurance ComfortDrive®	60,000	95,000
Eagle Exhilarate™	45,000	75,000
Eagle® F1 Asymmetric All-Season*	45,000	75,000
Eagle® Sport All-Season**	50,000	80,000
ElectricDrive™	60,000	95,000
ElectricDrive™ GT	40,000	65,000
Fortera® HL	60,000	95,000
Wrangler® All-Terrain Adventure with Kevlar®	60,000	95,000
Wrangler DuraTrac® (Excludes LT sizes)	50,000	80,000
Wrangler Fortitude HT® (Excludes LT sizes)	65,000	105,000
Wrangler Fortitude HT® (LT sizes)	50,000	80,000
Wrangler SR-A® (Excludes LT sizes)	50,000	80,000
Wrangler TrailRunner AT®	55,000	85,000
Wrangler® Workhorse® AT	50,000	80,000

*For vehicles with different front and rear tire sizes, the rear tires will have a 22,500 mile/37,500 kilometre tread life warranty.

**For vehicles with different front and rear tire sizes, the rear tires will have a 25,000 mile/40,000 kilometre tread life warranty.

DuPont™ and Kevlar® are trademarks or registered trademarks of E.I. du Pont de Nemours and Company.

HOW WILL TREAD LIFE LIMITED WARRANTY CHARGES BE CALCULATED?

Driving habits, road conditions, driving conditions and vehicle maintenance are all factors that contribute to tire wear. If your tires do not reach the miles/kilometres listed in the Tread Life table and meet with all the terms of the Tread Life Limited Warranty, the tires will be replaced as follows:

If the tread wears evenly down to the treadwear indicators (worn to $2/32$) before delivering the warranted mileage, the tire will be replaced on a prorated basis, provided the original invoice is presented showing the vehicle mileage when the tires were originally installed.

EXAMPLE: If your tire has a tread life limited warranty of 80,000 miles (130,000 kilometres) and delivers 56,000 miles (91,000 kilometres) prior to wear-out (down to $2/32$ "), the tire will be replaced for 70% of the advertised selling price of the comparable tire at the time of adjustment. If the price of the new comparable tire is \$130, the cost to you would be \$91, plus any additional charges such as mounting, balancing and any other applicable taxes and government-mandated charges.

The Tread Life Limited Warranty applies only if you are the original purchaser and the tires have been used only on the vehicle on which they were originally installed, according to Goodyear's or the vehicle manufacturer's recommendations.

However, the Tread Life Limited Warranty does not apply to:

- Tires used in commercial applications including, but not limited to, police, taxi service, national account, government and contract sales.
- Tires supplied as original equipment.
- Tires that are installed on any vehicle other than the vehicle on which they were originally installed.
- Tires that after leaving the producing factory have had the tread pattern altered in any manner such as, but not limited to, siping, carving, shaving or having any material applied to the tread surface.

You must retain your original tire purchase invoice (see B. under Owner's Obligations) for tread life limited warranty consideration.

OWNER'S OBLIGATIONS:

- A. You must rotate your tires in accordance with the prescribed rotation patterns as recommended by either the vehicle manufacturer or Goodyear.
- B. When making a claim under the Tread Life Limited Warranty, you must present your original tire purchase invoice which shows the tire description, mileage and date the tire(s) were installed.
- C. You must present the tire to be adjusted to a Goodyear Retailer. Tires replaced as an adjustment become the property of The Goodyear Tire & Rubber Company or Goodyear Canada Inc.
- D. You must pay any other applicable taxes and government-mandated charges for any additional service you order at the time of adjustment relating to any unique applications requiring mounting, demounting or balancing.
- E. No claim will be recognized unless submitted on a Goodyear claim form (supplied by a Goodyear Retailer) completely filled out and where you, the owner, or your authorized agent presented the tire for adjustment.

WHAT IS NOT COVERED BY THIS WARRANTY?

This limited warranty does not cover the following:

- Tires submitted for ride disturbance complaints that are worn beyond the first two thirty-seconds of an inch ($2/32$ ") tread depth or tires submitted for ride disturbance due to damaged wheels or any vehicle condition.
- Goodyear does not warrant or give credit in any adjustment transaction for any kind of material added to a tire (e.g., tire fillers, sealants, balancing substances) after the tire leaves a factory producing Goodyear tires, nor will it adjust any tire that has failed as a result of adding such material.
- Irregular wear or damage due to mechanical condition of the vehicle, improper inflation, overloading, high speed spin-up, misapplication, misuse, negligence, racing, use of tire chains, improper mounting or demounting, improper repair, wreck, collision or fire.
- Road hazards (includes, but is not limited to, punctures, cuts, snags, impact breaks, etc.).
- Any tire that, after leaving a factory producing Goodyear tires, has been intentionally altered to change its appearance (e.g., white inlay on a black tire or regrooved).

- Tires with weather-cracking that were purchased more than four (4) years prior to presentation for adjustment or, if purchase date cannot be verified, manufactured more than four years prior to presentation for adjustment.
- Temporary spare tires used on vehicles used in racing and on passenger cars in special applications such as police pursuit service.
- Goodyear Unisteel Commercial Radial Light Truck Tires.
- Tires removed from service due to improper repairs.
- Cosmetic weather checking.
- Low tire pressure-monitoring system – refer to vehicle manufacturer's warranty.
- Ultra high-performance summer tires are not recommended for winter use, and tread or shoulder cracking on those tires resulting from winter use will not be covered under our warranty.

WHAT ARE YOUR LEGAL RIGHTS?

No Representative or Dealer has authority to make any representation, promise or agreement on behalf of Goodyear, except as stated herein. Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this warranty a representation that a tire failure cannot occur.

DISCLAIMER: THIS WARRANTY IS IN LIEU OF, AND GOODYEAR HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND IS MADE BY GOODYEAR OR SHALL BE IMPLIED BY LAW.

LIMITATION OF DAMAGES: IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL GOODYEAR BE LIABLE TO THE BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, LOST PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, PUNITIVE OR OTHER DAMAGE, COST (INCLUDING FOR REPLACEMENT TRANSPORTATION), EXPENSE OR LOSS OF ANY KIND. SOME STATES AND PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

This warranty gives you specific legal rights and you may also have other rights that vary from state to state or province to province.

HOW DO YOU OBTAIN AN ADJUSTMENT?

- You must present the tire to be adjusted to an authorized Goodyear service facility. Tires replaced on an adjustment basis become the property of The Goodyear Tire & Rubber Company or Goodyear Canada Inc.
- You must pay for taxes and any additional services you order at the time of adjustment plus any additional service that may be unique to your application, e.g., Tire Pressure-Monitoring System.
- You must submit your claim on an approved claim form supplied by an authorized Goodyear service facility. The form must be filled out completely and signed, where you the owner or your authorized agent presented the tire for adjustment.

You must go to an authorized Goodyear outlet for replacement tires and all warranty service.



SAFETY WARNINGS

Property damage, serious injury or death may result from:

- **TIRE FAILURE DUE TO UNDERINFLATION/OVERLOADING/MISAPPLICATION.** Follow the vehicle owner's manual or tire placard in vehicle.
- **TIRE FAILURE DUE TO IMPACT DAMAGE/IMPROPER MAINTENANCE.** Tires should be inspected regularly by a qualified technician for signs of damage, such as punctures or impacts.
- **TIRE FAILURE DUE TO IMPROPER REPAIRS.** See U.S. Tire Manufacturers Association (USTMA) established repair procedures at www.ustires.org and/or go to www.goodyear.com for information on proper repair procedures.

- **EXPLOSION OF TIRE/RIM ASSEMBLY DUE TO IMPROPER MOUNTING.** Only specially trained persons should mount tires.
- **FAILURE TO MOUNT RADIAL TIRES ON APPROVED RIMS.**
- **FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING.**
- **TIRE SPINNING.** On slippery surfaces such as snow, mud, ice, etc., do not spin tires in excess of 35 mph [55 kph], as indicated on the speedometer.
- **EXCESSIVE WHEEL SPINNING.** This can also result in tire disintegration or axle failure.

 **WARNING** Vehicle handling, traction, ride comfort and other performance parameters may be significantly affected by a change in tire size or type. Before replacing tires, always consult and follow the vehicle owner's manual because some vehicle manufacturers prohibit changing tire size. When selecting tires that are different from the original equipment size make certain: (1) The tires have adequate load-carrying capacity based on the vehicle placard, (2) The tires have sufficient inflation pressure to carry the load and (3) There is proper clearance with no interference points between the tire and vehicle. The consumer must be aware to always drive safely and obey all traffic laws. Avoid sudden, sharp turns or aggressive lane changes. Failure to follow any of these warnings may result in loss of control of the vehicle, leading to an accident and serious injury or death.

TIRE CARE AND MAINTENANCE GUIDE

The easiest way to help ensure satisfactory mileage and performance from your Goodyear tires is to give them a simple but frequent (at least monthly) inspection for proper inflation, even treadwear and the presence of any damage.

DO MAINTAIN PROPER INFLATION PRESSURE IN YOUR TIRES

Proper inflation pressure is necessary for optimum tire performance, safety and fuel economy. Check inflation pressures at least once a month and before long trips. Use an accurate tire pressure gauge. Always check pressures when the tires are cold (when the vehicle has been driven less than one mile). If you must check inflation when the tires are hot, add 4 psi [27 kPa] to the recommended cold inflation pressure. It is difficult to tell just by looking at radial tires whether they are underinflated.*

Furthermore, when operating a vehicle equipped with radial tires, it is difficult to notice when a tire has gone flat or nearly flat since the "feel" of the vehicle does not change significantly.

***Evidence of air loss or repeated underinflation always requires expert inspection to determine the source of leakage and tire removal to determine reparability. To avoid injury, NEVER attempt to reinflate a tire that has been run severely underinflated.**

Progressive air loss may result from punctures, cuts, curbing, impacts or partial bead unseating. Some fitment causes for air loss are (1) incomplete bead seating, (2) bead tearing caused by a machine tool due to insufficient lubrication or improper adjustment. Leaking valve core or rubber valve components should be replaced when problems are detected and whenever tires are replaced.

Always maintain inflation pressure at the level recommended by the vehicle manufacturer as shown on the vehicle placard, vehicle certification label or in the vehicle owner's manual.

Underinflation is the leading cause of tire failure and may result in severe cracking, component separation or "blowout." It reduces tire load capacity, allows excessive sidewall flexing and increases rolling resistance, resulting in heat and mechanical damage. Maintaining proper inflation pressure is the single most important thing you can do to promote tire durability and maximize tread life. Overinflation increases stiffness, which may deteriorate ride and generate unwanted vibration. Overinflation also increases the chances of impact damage.

DON'T OVERLOAD YOUR VEHICLE

Check your vehicle owner's manual to determine the load limits.

Overloading your vehicle places stress on your tires and other critical

vehicle components. Overloading a vehicle can cause poor handling or increased fuel consumption and may cause tire failure. Overloading your tires can result in severe cracking, component separation or “blowout.”

Never fit your vehicle with new tires that have less load capacity than shown on the vehicle tire placard and remember that optimum rim width is important for proper tire load distribution and function. The maximum load capacity stamped on the sidewalls of P-Metric & European Metric tires is reduced by 10% when used on a light truck, utility vehicle or trailer. Never fit P-Metric or European Metric tires to light trucks that specify LT-type replacement tires.

DON'T SPIN YOUR TIRES EXCESSIVELY

Avoid excessive tire spinning when your vehicle is stuck in snow, ice, mud or sand. The centrifugal forces generated by a free-spinning tire/wheel assembly may cause sudden tire explosion, resulting in vehicle damage and/or serious personal injury to you or a bystander.

Never exceed 35 mph/55 kph, as indicated on your speedometer. Use a gentle backward and forward rocking motion to free your vehicle for continued driving. Never stand near or behind a tire spinning at high speeds, for example, while attempting to push a vehicle that is stuck or when an on-the-car spin balance machine is in use.

DO CHECK YOUR TIRES FOR WEAR

Always remove tires from service when they reach two thirty-seconds of an inch (2/32") remaining tread depth. All new tires have treadwear indicators which appear as smooth banks in the tread grooves when they wear to the two thirty-seconds of an inch (2/32") level. Many wet weather accidents result from skidding on bald or nearly bald tires. Excessively worn tires are also more susceptible to penetrations.

DO CHECK YOUR TIRES FOR DAMAGE

Frequent (at least monthly) inspection of your tires for signs of damage and their general condition is important for safety. If you have any questions, have your tire Dealer inspect them. Impacts, penetrations, cracks, knots, bulges or air loss always require tire removal and expert inspection. Never perform a temporary repair or use an inner tube as a substitute for a proper repair. Only qualified persons should repair tires.

PROPER TIRE REPAIR

NOTE: Goodyear does not warrant any inspection or repair process.

The repair is entirely the responsibility of the repairer and should be made in accordance with established U.S. Tire Manufacturers Association (USTMA) procedures.

Tire Pressure-Monitoring System Alert

Refer to your vehicle Owner's Manual for more information on what to do if the tire pressure warning system activates.

THE CONVENIENCE (TEMPORARY) SPARE

The Convenience (Temporary) Spare is designed, built and tested to the high engineering standards set by North America's leading car manufacturers and to Goodyear's own high standards of quality control. It is designed to take up a minimum of storage space and, at the same time, fulfill the function of a spare tire when needed. The spare is kept in its storage space, fully inflated at 60 psi. To be sure it is always ready for use, the air pressure should be checked on a regular basis.

The Convenience (Temporary) Spare can be used in combination with the original tires on your vehicle. You can expect a tire tread life of up to 3,000 miles (4,800 kilometres), depending on road conditions and your driving habits. To conserve tire tread life, return the spare to the storage area as soon as it is convenient to have the standard tire repaired or replaced.

The Convenience (Temporary) Spare weighs less than a standard tire so it's easier to handle. It also helps reduce the total car weight, which contributes to fuel economy.

The wheels used with the Convenience (Temporary) Spare are specifically designed for use with high pressure spares and should never be used with any other type tire.

SPECIAL TRAILER (ST) TIRES:

Your Goodyear Special Trailer (ST) tires are specifically designed and constructed to optimize their performance on non-driven trailer axle applications. Goodyear's Special Trailer (ST) tires are used on popular vehicle fitments, including, but not limited to: Travel Trailers, Utility Trailers, Equipment Trailers, Watercraft Trailers, Car Haulers, etc..

Due to the seasonal nature and often unique loadability of these trailers, it is very important to check inflation pressures at least once a month and before trips. Use an accurate tire pressure gauge. Always check pressures when the tires are cold (when the trailer has been driven less than one mile). If you must check inflation when the tires are hot, add 4 psi (27 kPa) to the recommended cold trailer placard inflation pressure. It is difficult to tell just by looking at radial tires whether they are underinflated. Check your trailer's certification placard to determine the load limits. Overloading your trailer places stress on your tires and other critical vehicle components. Overloading a trailer can cause poor handling or increased fuel consumption and may cause tire failure. Overloading your trailer tires can result in severe cracking, component separation or "blowout." Never fit your trailer with new tires that have less load capacity than shown on the trailer's tire placard and remember that optimum rim width is important for proper tire load distribution and function.

Inspection of your Special Trailer tires is an important function. Frequent (at least monthly) and before any trip inspection of your tires for signs of damage and their general condition is important for safety. If you observe or experience impact, impact damage, penetrations, cracks, bulges or air loss, your tires should be dismantled and inspected by an expert. If you have any questions, have your tire Dealer inspect them. Never perform a temporary repair or use an inner tube as a substitute for a proper repair. Only qualified persons should repair tires.

It is also important to properly store your trailer and its tires. A good resource for tire storage recommendations is the U.S. Tire Manufacturers Association website at www.ustires.org.

DON'T ATTEMPT TO MOUNT YOUR OWN TIRES

Serious injury or death may result from explosion of tire/rim assembly due to improper mounting procedures. Follow tire manufacturer's instructions and match tire diameter to rim diameter. Mount light truck radials on rims approved for radial service. Do not apply bead sealer. This can inhibit bead seating. Lubricate beads and tire rim (including tube or flap) contact surfaces. Lock assembly on mounting machine or place in safety cage. STAND BACK and never exceed 40 psi to seat beads. Never use a volatile substance or a rubber "donut" (also known as a bead expander or "O-Ring") to aid bead seating. Only specially trained persons should mount tires.

DON'T MIX TIRES OF DIFFERENT SIZES AND TYPES ON THE SAME AXLE

For optimum handling and control, Goodyear recommends fitment of four (4) tires of the same type and size unless otherwise specified by the vehicle manufacturer.

** WARNING**

Before you replace your tires, always consult the vehicle owner's manual and follow the vehicle manufacturer's replacement tire recommendations. Vehicle handling may be significantly affected by a change in tire size or type. When selecting tires that are different from the Original Equipment size, see a professional installer in order to make certain that proper clearance, load-carrying capacity and inflation pressure are selected. Never exceed the maximum load capacity and inflation pressure listed on the sidewall of the tire. Always drive safely and obey all traffic laws. Avoid sudden, sharp turns or aggressive lane changes. Failure to follow this warning may result in loss of control of the vehicle, leading to an accident and serious injury or death.

When replacing tires, you must maintain the outside diameter and load-carrying capacity of the Original Equipment tire. Inflation pressure may need to be adjusted to avoid overloading the tire. Consult the Tire & Rim Association Load and Inflation Tables, ETRTO or JATMA standards for correct load and inflation information.

NEVER FIT TIRES TO A VEHICLE THAT HAVE LESS LOAD-CARRYING CAPACITY THAN REQUIRED BY THE ORIGINAL EQUIPMENT MANUFACTURER

Examples: Many vehicles, such as large passenger vans, require Load Range E tires as designated by the vehicle manufacturer. Fitment of a tire, such as a Load Range D, with less carrying capacity is not allowed.

NOTE: Goodyear-manufactured and/or marketed European-Metric and P-Metric passenger tires are interchangeable as long as they have the same section width, same aspect ratio and same rim diameter.

Caution: Never substitute a "Standard Load" (SL) tire for an "Extra Load" (XL) or "Reinforced" tire. If the vehicle was originally equipped with "Extra Load" (XL) or "Reinforced" tires, replace those tires with similar-sized "Extra Load" (XL) or "Reinforced" tires.

FOLLOW THESE ADDITIONAL GUIDELINES

When installing only two tires, fit the tires with the deepest tread depth on the rear axle. If radials and non-radials must be fitted to the same vehicle, fit radials on rear axle. Never mix radials and non-radials on the same axle. When fitting winter tires or all-season tires to performance vehicles, always fit in sets of four. It is not recommended to fit tires with different speed ratings. If tires with different speed ratings are installed on a vehicle, they should be installed with like pairs on the same axle. The speed capability of the vehicle will become limited to that of the lowest speed rated tires. Use of lift kits with some vehicle/tire combinations can cause instability. When changing tire sizes, always consult Dealer for optimum rim width and carefully check vehicle/tire clearances.

RETRADED TIRES

Goodyear does not recommend retreading passenger, fabric ply light truck or special trailer tires. Retreaded passenger, fabric ply light truck and special trailer tires are not warranted by Goodyear for any reason.

DO MAINTAIN VEHICLE SUSPENSION, WHEEL ALIGNMENT AND BALANCE AND ROTATE YOUR TIRES

Lack of rotation, worn suspension parts, underinflation/overinflation, wheel imbalance and misalignment can cause vibration or irregular tire wear. Rotate your tires according to your vehicle manufacturer's recommendations or at maximum intervals of 6,000 miles/10,000 km.

FOR ADDITIONAL INFORMATION, SEE THE "BE TIRE SMART/PLAY YOUR PART" BROCHURE PUBLISHED BY U.S. TIRE MANUFACTURERS ASSOCIATION (USTMA). A COPY OF THIS BROCHURE CAN BE DOWNLOADED FROM THE USTMA WEBSITE:

<https://www.ustires.org/publications>

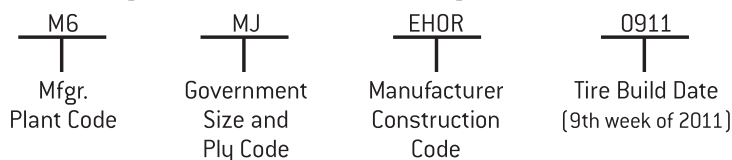
HOW TO READ A TIRE D.O.T. SERIAL NUMBER

D.O.T. stands for Department of Transportation and the number is on the lower sidewall of each tire to show that the tire meets or exceeds the Department of Transportation safety standards.

Understanding Tire D.O.T. Numbers

M6MJEH0R0911

12 Digit # = 2000's Production / 11 Digit # = 1990's Production



TIRE SERVICE LIFE

While most tires will be replaced sooner, Goodyear recommends that any tire in service (meaning inflated and mounted on a rim of your vehicle, including your spare tire regardless of whether that tire is in contact with the roadway) 6 years or more be replaced even if such tire appears serviceable and even if it has not reached the legal treadwear limit.

if you are unable to determine the date a tire was first placed in service, then you should rely on the DOT code stamped on the tire and replace any tire which was manufactured more than 6 years ago (see HOW TO READ A TIRE D.O.T. SERIAL NUMBER). Tires that should otherwise be replaced based on wear, damage or any other factor should not be kept in service regardless of the date they were first placed in service or their date of manufacture.

Also, consumers should never purchase or install used tires of any age on their vehicle as the service, maintenance and storage history of used tires is largely unknown. Various automobile manufacturers have published statements and instructions regarding tire service life, which include tire replacement recommendations based on chronological age. Goodyear advises that consumers refer to their owners' manuals for guidance on the vehicle manufacturer's replacement recommendations (but regardless of any such vehicle manufacturer's advice, any tire's replacement period should not exceed 6 years from the date the tire is placed in service or 6 years from the date included in the DOT code on the sidewall of the tire if you are unable to determine the date the tire was first placed in service).

Check your vehicle's owner's manual (or your vehicle) to determine if it is equipped with run-flat (extended mobility) tires. If your vehicle is equipped with run-flat tires, the following applies:

RUN-FLAT TECHNOLOGY EXTENDED MOBILITY TECHNOLOGY (EMT™), RUNONFLAT® (ROF)

IMPORTANT SAFETY INFORMATION

OPERATIONAL MONITORING

In order for Goodyear Run-Flat (Extended Mobility Technology [EMT], RunOnFlat [ROF]) tires to obtain the performance criteria stated within this Limited Warranty, Goodyear tires must use specific parts, such as a low tire pressure-monitoring system authorized by the Original Equipment vehicle manufacturer.

Vehicles that are equipped Original Equipment with Goodyear Run-Flat tires must be fitted with wheels, tires and tire pressure-monitoring systems as specified by your vehicle manufacturer. For proper wheel, tire and TPMS fitment, please refer to your vehicle's Owner's Manual.

RUN-FLAT TIRE FEATURE

The Goodyear Run-Flat tire is a high-performance tire with a remarkable feature: It can operate for limited distances (driven 50 miles [80 km] maximum at speeds up to 50 mph [80 kph]) with very low or even no inflation pressure. This is an important benefit, especially if inflation loss occurs at a location where immediately stopping your vehicle could be hazardous.

Because these tires ride well even without air pressure, your vehicle must be equipped with a system to alert you when a tire has low or no air pressure.

TIRE PRESSURE-MONITORING SYSTEM ALERT

Refer to your vehicle Owner's Manual for more information on what to do if the tire pressure warning system activates.



WARNING

If the tire pressure-monitoring system signals an alert, follow these safety precautions to prevent a loss of vehicle control that could result in serious personal injury or death:

- Slow your speed. Do not exceed 50 mph [80 kph].
- Avoid hard cornering, hard braking and severe handling maneuvers.
- Avoid potholes and other road hazards.

Remember that when your tires have lost air pressure, your vehicle's handling capability is reduced, particularly during severe maneuvers.

TO PROLONG TIRE LIFE DURING A SYSTEM ALERT

The Goodyear Run-Flat tires can be driven up to 50 miles (80 km) at sustained speeds of up to 50 mph (80 kph) at low or zero air pressure. However, the tire may have to be replaced if driven to these limits. To help prolong the life of a tire operating under low-inflation conditions, drive at a speed as far below 50 mph (80 kph) as possible. Also, drive the shortest distance possible before obtaining tire service. Taking these precautions will increase the chance that your tire will be repairable.

SERVICE AFTER A SYSTEM ALERT

To obtain service after operating under low-inflation conditions, contact your Goodyear Run-Flat service facility. Trained service personnel will inspect your tires to determine if they are in need of repair or replacement. To locate the nearest authorized Goodyear Run-Flat service facility, call 1-800-GOODYEAR (1-800-466-3932).

WARNING

Because of the unique characteristics of Run-Flat tires, the wheels on which they are mounted and your vehicle's tire pressure-monitoring system, all tire service work other than routine inflation maintenance and external inspections must be performed by service personnel at a Goodyear Run-Flat service facility.

Do not attempt to mount or demount Run-Flat tires yourself; serious injury or death could result. Only specially trained persons should mount, demount and repair Run-Flat tires, and more than 40 psi (270 kPa) may be required to seat beads. A safety cage and clip-on extension air hose must be used if more than 40 psi (270kPa) is needed to seat beads.

TIRE REPAIR

Like any other Goodyear speed-rated, high-performance tire, the Goodyear Run-Flat tire may be repaired to correct a puncture in the tread, but PROPER MATERIALS AND PROCEDURES MUST BE USED. Contact a Goodyear or Run-Flat service facility for information on proper repairs. For the location of the nearest facility, call 1-800-GOODYEAR (1-800-466-3932).

WARNING

Goodyear Run-Flat tires are designed for use only on certain original equipment wheels supplied with a properly operating low tire pressure-monitoring system. If applied to a vehicle without a properly operating low tire pressure-monitoring system, the tires may fail when operated in an underinflated condition, resulting in loss of vehicle control and possible serious injury or death. Application of these tires to a vehicle not equipped with specified operational low tire pressure-monitoring system constitutes improper and unsafe use of this product.

FOR SERVICE ASSISTANCE OR INFORMATION, FIRST CONTACT THE NEAREST GOODYEAR RETAILER.

- 1) For assistance in locating the nearest Goodyear Retailer, call 1-800-GOODYEAR or look in the Yellow Pages under Tire Dealers – New.
- 2) Go to www.goodyear.com for the U.S. or www.goodyear.ca for Canada.

If additional assistance is required:

**Call the Customer Assistance Center
at 1-800-321-2136 for U.S. or 1-800-387-3288 for Canada**

email: goodyear_cr@goodyear.com or write:

**Customer Assistance Center
Dept 728
200 Innovation Way
Akron, OH 44316-0001**

SIX MONTH - 6,000 MILE/10,000 KILOMETRE ROTATION RECORD

ODOMETER READING AT 1st ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 2nd ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 3rd ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 4th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 5th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 6th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 7th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 8th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 9th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 10th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 11th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 12th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 13th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 14th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 15th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 16th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 17th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE
ODOMETER READING AT 18th ROTATION	ROTATED BY (DEALER/STORE NAME)	DATE



GOODYEAR UNISTEEL® LIMITED WARRANTY

United States & Canada

Unisteel® Radial Light Truck Tires Unisteel Radial Medium Truck Tires

WHO IS ELIGIBLE FOR WARRANTY COVERAGE?

You are eligible for the benefits of this limited warranty if you meet all the following criteria:

- You are the owner or authorized agent of the owner of new Goodyear® Unisteel radial light truck or medium radial truck tires, including mud and snow and on/off-road tires.
- Your tires bear Department of Transportation (DOT) prescribed tire identification numbers and are not branded “NA” (Not Adjustable).
- Your Goodyear truck tires have been used only on the vehicle on which they were originally installed according to the vehicle manufacturer’s or Goodyear’s recommendations.
- Your tires were purchased on or after March 1, 2022.

WHAT IS COVERED AND FOR HOW LONG?

1. FREE TIRE REPLACEMENT — Goodyear truck tires covered by this warranty that become unserviceable due to a covered warranty condition during the first 2/32" (inch) treadwear or 12 months from date of purchase, whichever comes first, will be replaced with a comparable new Goodyear tire without charge. You pay only for the mounting and balancing. (Without proof of purchase, date of manufacture will be used to determine eligibility.)

2. PRORATED TIRE REPLACEMENT — Tires worn beyond the first 2/32" (inch) treadwear that become unserviceable due to a covered warranty condition will be replaced on a prorated basis. You are responsible for mounting, balancing and any additional services you order at the time of adjustment, as well as any taxes and government-mandated charges.

3. TIRES WITH DURASEAL TECHNOLOGY® — SEALANT CREDIT DURING ORIGINAL TREAD* — Failure of the DuraSeal Technology to seal a maximum 1/4" (inch) puncture in the repairable area of the original tread will qualify for a one-time credit during the life of the original tread within four (4) years from the date of the casing DOT serial number or proof of purchase, if available. Sealant credit is based on local currencies in the country where the adjustment takes place, \$50.00 for both the U.S. and Canada.

4. TIRES WITH DURASEAL TECHNOLOGY — SEALANT CREDIT DURING FIRST RETREAD* — Failure of the DuraSeal Technology to seal a maximum 1/4" (inch) puncture in the repairable area of the tread will qualify for a one-time credit through 100% of the first retread up to four (4) years from the date of the casing DOT serial number or proof of purchase, if available. Sealant credit is based on local currencies in the country where the adjustment takes place, \$25.00 for both the U.S. and Canada. All punctures must be repaired at time of retreading for this

Limited Warranty to be honored. If a sealant credit was issued during the original tread life, no other requests for credit will be honored.

*All claim forms submitted for sealant credit must be verified by an authorized Goodyear representative.

HOW WILL THE PRORATED CHARGES BE CALCULATED?

The replacement price will be calculated by multiplying the current Goodyear advertised selling price, at the adjustment location, by the percentage of usable original tread that has been worn off at the time of adjustment. You pay for mounting, balancing, an amount equal to the full current Federal Excise Tax (FET — U.S. only) and any other applicable taxes for the comparable new Goodyear replacement tire as well as any government-mandated charges.

EXAMPLE:

If your disabled tire had an original 16/32" (inch) of usable tread depth and is worn to 8/32" (inch) of usable tread remaining, you have used 50% and therefore must pay 50% of the advertised selling price of a comparable tire, plus an amount equal to the full current Federal Excise Tax (U.S. only) applicable to the comparable new replacement tire at the time of adjustment. If the price of the comparable tire is \$400.00, the cost to you would be \$200.00 plus Federal Excise Tax (U.S. only), mounting, balancing, any other applicable taxes and government-mandated charges.

Amount Of Tread Used Original Tread	X	Value Of Comparable Tire	=	Prorated Price Of New Tire
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(Plus FET [U.S. only], other applicable taxes, government-mandated charges and mounting and balancing.)

WHAT IS A COMPARABLE TIRE?

A “comparable” new Goodyear tire may be either the same line of tire or, in the event that the same tire is not available, a tire of the same basic construction and quality with a different sidewall or tread configuration. If a higher priced tire is accepted as replacement, the difference in price will be at an additional charge to you.

Any replacement tire provided pursuant to this warranty will be covered by the Goodyear warranty in effect at the time of replacement.

WHAT IS NOT COVERED UNDER THIS LIMITED WARRANTY?

- Wear conditions or tire damage due to road hazards (including punctures, cuts, snags, impact breaks, etc.). Wreck, collision, or fire. Fast wear, irregular wear, heel and toe wear or other wear conditions.
- Improper inflation, overloading, high-speed spinup,

misapplication, misuse, negligence, racing, chain damage, or improper mounting or demounting.

- Mechanical condition of the vehicle.
- Chip/chunk conditions on tires intended for highway service.
- Ride disturbance after the first 2/32" (inch) treadwear or due to damaged wheels or any vehicle condition.
- Any tire intentionally altered after leaving a factory producing Goodyear tires to change its appearance (example: white inlay on a black tire).
- Tires with weather cracking which were purchased more than four (4) years prior to presentation for adjustment. If you have no proof of purchase date, tires manufactured four (4) or more years prior to presentation are not covered.
- Material added to a tire after leaving a factory producing Goodyear tires (examples: tire fillers, sealants or balancing substances). If the added material is the cause of the tire being removed from service, the tire will not be adjusted.
- Any Goodyear Commercial Truck tire with the word “Mileage” on the sidewall.
- Tires removed from service due to improper repairs.
- Loss of time, inconvenience, loss of use of vehicle, incidental or consequential damage.

Note: Some states or provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

This limited warranty is applicable only in the U.S. and Canada.

WHAT IS THE PREMIUM RADIAL MEDIUM TRUCK TIRE CASING PROVISION?

Goodyear® Premium Casings	
Endurance LHS, LHD, RSA	G572 1AD Fuel Max
G316® LHT™ DuraSeal + Fuel Max™	Fuel Max LHD2
G316® LHT™ Fuel Max®	Fuel Max™ RSA
Fuel Max™ LHT™	Fuel Max™ RTD
	UltraGrip RTD

Goodyear premium casings in sizes 11R22.5, 11R24.5, 285/75R24.5 or 295/75R22.5 will be warranted for covered conditions through the first retread for a period of seven (7) years from the date of the casing DOT serial number or proof of purchase, if available.

If retreaded by a Goodyear Authorized Retreader, these premium casings will be warranted for covered conditions for an unlimited number of retreads for a period of seven (7) years from the date of the casing DOT serial number or proof of purchase, if available.

Casing credit is based on local currencies in the country where the adjustment takes place. Casing allowances are \$130.00 for tires with original tread and \$100.00 after retreading in both the U.S. and Canada.

WHAT IS THE MARATHON® LONG HAUL RADIAL & MARATHON REGIONAL SERVICE RADIAL MEDIUM TRUCK TIRE CASING PROVISION?

Any Goodyear Marathon LHS®, Marathon LHD®, Marathon LHT™, Marathon RSA®, Marathon RSS®, Marathon RSD® & Marathon RTD® will be warranted for covered conditions through the first retread for a period of six (6) years from the date of the casing DOT serial number or proof of purchase, if available.

If retreaded by a Goodyear Authorized Retreader, these mid-tier casings will be warranted for covered conditions for an unlimited number of retreads for a period of six (6) years from the date of the casing DOT serial number or proof of purchase, if available.

Casing credit is based on local currencies in the country where the adjustment takes place. Casing allowances are \$100.00 in both the U.S. and Canada.

WHAT IS THE RADIAL MEDIUM TRUCK TIRE CASING PROVISION?

All other Goodyear UniSteel® radial light truck or radial medium truck tires will be warranted for covered conditions through the first retread for a period of four (4) years from the date of the casing DOT serial number or proof of purchase, if available.

If retreaded by a Goodyear Authorized Retreader, except G278 MSD and Armor Max MSA in tire sizes 385/65R22.5, 425/65R22.5 and 445/65R22.5 and all Fuel Max SSD DuraSeal and all Fuel Max SST Duraseal (see paragraph below), casings will be warranted for covered conditions for an unlimited number of retreads for a period of four (4) years from the date of the casing DOT serial number or proof of purchase, if available.

If retreaded, all G278 MSD and Armor Max MSA in tire sizes 385/65R22.5, 425/65R22.5 and 445/65R22.5 and all Fuel Max SSD DuraSeal and all Fuel Max SST Duraseal will be warranted for covered conditions for one retread for a period of four (4) years from the date of the casing DOT serial number or proof of purchase, if available.

Casing values are based on the predetermined casing value at the time of adjustment. See your servicing Dealer for these values.

HOW DO YOU KNOW WHEN YOUR TIRES WERE MANUFACTURED?

Tires with a DOT number ending with 0909 or greater were manufactured after 03/01/2009 (0909 refers to the 1st week of March 2009). These tires are covered under the provisions of this warranty coverage.

WHEN DOES THE WARRANTY END?

Premium Radial Medium Truck tires have delivered the full original tread life and the new tire coverage of this warranty ends when the treadwear indicators become visible or seven (7) years from the date of original tire manufacture or new tire purchase date (whichever occurs first). Without proof of purchase, date of manufacture will be used to determine eligibility. Casings may continue to be warranted beyond the new tire coverage. Please refer to the "WHAT IS THE PREMIUM RADIAL MEDIUM TRUCK TIRE CASING PROVISION?" section for warranty details on casings.

Marathon LHS®, Marathon LHD®, Marathon LHT®, Marathon RSA®, Marathon RSS®, Marathon RTD® & Marathon RSD® Radial Medium Truck tires have delivered their full original tread life and the new tire coverage of this warranty ends when the treadwear indicators become visible, or six (6) years from the date of original tire manufacture or new tire purchase date (whichever occurs first). Without proof of purchase, date of manufacture will be used to determine eligibility. Casings may continue to be warranted beyond the new tire coverage. Please refer to the "WHAT IS THE MARATHON® LONG HAUL & MARATHON REGIONAL SERVICE RADIAL MEDIUM TRUCK TIRE CASING PROVISION?" section for warranty details on casings.

All other Goodyear UniSteel radial light truck or radial medium truck tires have delivered the full original tread life and the new tire coverage of this warranty ends when the treadwear indicators become visible or four (4) years from the date of original tire manufacture or new tire purchase date (whichever occurs first). Without proof of purchase, date of manufacture will be used to determine eligibility. Casings may continue to be warranted beyond the new tire coverage. Please refer to the "WHAT IS THE RADIAL MEDIUM TRUCK TIRE CASING PROVISION?" section for warranty details on casings.

HOW DO YOU OBTAIN AN ADJUSTMENT?

- A. You must present the tire to be adjusted to an authorized Goodyear Commercial Tire Retailer. Please consult your telephone directory or visit www.goodyeartrucktires.com for locations. Tires replaced on an adjustment basis become the property of The Goodyear Tire & Rubber Company or Goodyear Canada Inc.
- B. You must pay for taxes or any additional services you order at the time of adjustment.
- C. No claim will be recognized unless submitted on a Goodyear claim form (supplied by a Goodyear Commercial Tire Retailer) that is completely filled out and signed by you, the owner of the tire presented for adjustment, or your authorized agent.

WHAT ARE YOUR LEGAL RIGHTS?

DISCLAIMER: THIS WARRANTY IS IN LIEU OF, AND GOODYEAR HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND IS MADE BY GOODYEAR OR SHALL BE IMPLIED BY LAW.

LIMITATION OF DAMAGES: IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL GOODYEAR BE LIABLE TO THE BUYER FOR CONSEQUENTIAL, LOST PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, PUNITIVE OR OTHER DAMAGE, COST (INCLUDING FOR REPLACEMENT TRANSPORTATION), EXPENSE OR LOSS OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

Note: No Representative or Dealer has authority to make any representation, promise or agreement on behalf of Goodyear except as stated herein. Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this warranty a representation that a tire failure cannot occur.

SERIOUS INJURY, DEATH OR PROPERTY DAMAGE MAY RESULT FROM:

- TIRE FAILURE DUE TO UNDERINFLATION/OVERLOADING/MISAPPLICATION. Follow the vehicle owner's manual or tire placard in the vehicle.
- TIRE FAILURE DUE TO IMPACT DAMAGE/IMPROPER MAINTENANCE. Tires should be inspected regularly by a qualified technician for signs of damage, such as punctures or impacts.
- TIRE FAILURE DUE TO IMPROPER REPAIRS. See U.S. Tire Manufacturers Association (USTMA) established repair procedures at www.ustires.org, and/or go to www.goodyear.com for information on proper repair procedures.
- EXPLOSION OF TIRE/RIM ASSEMBLY DUE TO IMPROPER MOUNTING. Only specially trained persons should mount tires. When mounting tires, use a safety cage and a clip-on extension air hose to inflate.
- FAILURE TO MOUNT RADIAL TIRES ON APPROVED RIMS.
- FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING.
- TIRE SPINNING. On slippery surfaces such as snow, mud, ice, etc., do not spin tires in excess of 35 mph (56 kph), as indicated on the speedometer.
- EXCESSIVE WHEEL SPINNING. This can also result in tire disintegration or axle failure.

FOR SERVICE ASSISTANCE OR INFORMATION:

1. First contact the nearest Authorized Goodyear Commercial Tire Retailer.
2. If additional assistance is required:
 - In the U.S., write to —
Goodyear Customer Assistance Center
Department 728
200 Innovation Way
Akron, OH 44316
 - In Canada, write to —
Goodyear Customer Assistance Center
450 Kipling Avenue
Toronto, Ont. M8Z 5E1

GOODYEAR® AUTHORIZED RADIAL RETREAD LIMITED WARRANTY

United States & Canada

COMMERCIAL TIRE

Goodyear Unisteel® Radial Truck Tires
Dunlop® Radial Truck Tires
Kelly® Radial Truck Tires

WHO IS ELIGIBLE AND WHAT IS COVERED?

You are eligible for the benefits of this limited warranty if you are the owner or the authorized agent of the owner of a radial truck tire casing which has been retreaded or repaired by a Goodyear Authorized Retreader using Goodyear brand retreads or Goodyear-authorized repair materials bearing a Department of Transportation (DOT) prescribed retreader tire identification number designating a Goodyear Authorized Retreader. This warranty is effective as of September 1, 2019. This warranty does not apply to tires designated for off-highway service.

WHAT IS THE CASING COVERAGE?

Goodyear premium casings (refer to the Goodyear Commercial warranty for the premium tire lines) in sizes 11R22.5, 11R24.5, 285/75R24.5 or 295/75R22.5 will be warranted for covered warranty conditions for an unlimited number of retreads up to seven (7) years from new tire manufacture or new tire purchase. All Goodyear premium casings beyond seven (7) years from date of new tire manufacture or new tire purchase, if proof of purchase is available, are excluded from coverage by this warranty. Casing credit is based on local currencies in the country where the adjustment takes place. Refer to the Goodyear Commercial warranty for the casing values.

Goodyear Marathon LHS®, Marathon LHD®, Marathon LHT™, Marathon RSA®, Marathon RSS®, Marathon RSD® and Marathon RTD® casings will be warranted for covered conditions for an unlimited number of retreads for a period of six (6) years from the date of new tire manufacture or new tire purchase, if proof of purchase is available. All Goodyear Marathon LHS, Marathon LHD, Marathon LHT, Marathon RSA, Marathon RSS, Marathon RSD and Marathon RTD casings beyond six (6) years from date of new tire manufacture or new tire purchase, if proof of purchase is available, are excluded from coverage by this warranty. Casing credit is based on local currencies in the country where the adjustment takes place. Refer to the Goodyear Commercial warranty for the casing values.

Dunlop premium casings (refer to the Dunlop Commercial warranty for the premium tire lines) in sizes 11R22.5, 11R24.5, 285/75R24.5 or 295/75R22.5 will be warranted for covered warranty conditions for an unlimited number of retreads up to six (6) years from new tire manufacture or new tire purchase, if

proof of purchase is available. All Dunlop premium casings beyond six (6) years from date of new tire manufacture or new tire purchase, if proof of purchase is available, are excluded from coverage by this warranty. Casing credit is based on local currencies in the country where the adjustment takes place. Refer to the Dunlop Commercial warranty for the casing values.

All Goodyear G392 SSD™ DuraSeal + Fuel Max™, G392A SSD DuraSeal + Fuel Max & G394 SST® DuraSeal + Fuel Max™, Fuel Max SSD DuraSeal, Fuel Max SST DuraSeal tires will be warranted for covered conditions for one retread for a period of four (4) years from the date of the casing DOT serial number or proof of purchase, if available.

All other Goodyear, Dunlop and Kelly radial truck tire casings will be warranted for covered warranty conditions for an unlimited number of retreads up to four (4) years from new tire manufacture or new tire purchase, if proof of purchase is available, and are eligible for a credit equal to the predetermined casing allowances. See your servicing dealer for these values at the time of adjustment. All other Goodyear, Dunlop and Kelly non-premium casings beyond four (4) years from date of new tire manufacture or new tire purchase, if proof of purchase is available, are excluded from coverage by this warranty. See applicable commercial warranty for full details.

In addition, brands other than Goodyear, Dunlop or Kelly medium truck tire radial casings, retreaded by a Goodyear Authorized Retreader using Goodyear brand retreads, that become unserviceable due to a covered warranty condition within the first 25% wear of the first retread or four (4) years from new tire manufacture or new tire purchase, if proof of purchase is available, (whichever occurs first) are eligible for a credit equal to the predetermined casing allowances. See your servicing dealer for these values at the time of adjustment. All brands other than Goodyear, Dunlop and Kelly casings beyond the first 25% wear of the first retread or four (4) years from date of new tire manufacture or new tire purchase, if proof of purchase is available, (whichever occurs first) are excluded from coverage by this warranty.

HOW WILL THE RETREAD CREDIT BE DETERMINED WHEN THE CASING BECOMES UNSERVICEABLE DUE TO A COVERED WARRANTY CONDITION?

Full credit for the retreading or repair costs will be

issued, based on the current retail selling price of the retread during the first 2/32" (inch) (or the first 25% for UniCircle® retreads) of usable treadwear if the casing becomes unserviceable within the coverage period due to a covered warranty condition.

Retreading costs that are not eligible for full credit will be prorated. The replacement price will be calculated by multiplying the current Goodyear retail selling price of the retread by the percentage of usable tread remaining at the time of adjustment.

You must pay for mounting, balancing, applicable taxes, government-mandated charges and any additional services you order at the time of adjustment.

EXAMPLE:

If your disabled tire had an original 16/3" (inch) of usable tread depth and is worn to 8/32" (inch) of usable tread remaining, you have used 50% and therefore must pay 50% of the advertised selling price of a comparable retread tire. If the price of the comparable tire is \$150.00, the cost to you would be \$75.00 plus mounting, balancing, any other applicable taxes and government-mandated charges.

Amount Of Tread Used Original Tread	X	Value Of Comparable Tire	=	Prorated Price Of New Tire
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(Plus applicable taxes, government-mandated charges, and mounting and balancing.)

WHAT IS THE COVERAGE ON GOODYEAR® AUTHORIZED RETREADER REPAIRS AND RETREADS?

Every retread/repair performed by a Goodyear Authorized Retreader on any radial casing using Goodyear authorized retread/repair materials and bearing a valid Department of Transportation (DOT) shop number of the Authorized Retreader is warranted to be free from a covered warranty condition and to give satisfactory service under normal operating conditions for the usable tread life of any retread.

Full replacement of the retread or repair costs will be issued, based on the current retail selling price of the retread or repair during the first 2/32" (inch) (or the first 25% for UniCircle® retreads) of usable treadwear if the retread or repair becomes unserviceable due to a covered warranty condition.

If a retread or repair becomes unserviceable due to a covered warranty condition beyond the no-charge period, a credit for the retread/repair cost will

be issued on a prorated basis. The credit will be determined by multiplying the current Goodyear retail selling price of the retread by the percentage of usable tread remaining at the time of adjustment.

You must pay for mounting, balancing, applicable taxes, government-mandated charges and any additional services you order at the time of adjustment.

IN ADDITION:

Radial casing allowances will be given on all qualifying radial retreaded casings if the retread became unserviceable due to a covered warranty condition.

In cases where the retread became unserviceable due to a covered warranty condition and the casing is outside the terms of this warranty, a credit for the retread only will be calculated.

All credits must be used toward the purchase of new or retreaded Goodyear, Dunlop® or Kelly® commercial products.

REMEMBER YOUR NEW TIRE WARRANTY

This limited warranty provides you with certain benefits as the owner of a radial casing that has been retreaded or repaired by a Goodyear Authorized Retreader. If you purchased a new Goodyear, Dunlop or Kelly commercial radial truck tire, you are also entitled to the benefits and are subject to the same Adjustment Limitations of the new tire limited warranty that was in effect at the time of purchase. Please consult your new tire warranty for details.

WHAT IS NOT COVERED UNDER THIS LIMITED WARRANTY?

- Wear conditions or tire damage due to road hazards (including punctures, cuts, snags, impact breaks, etc.), wreck, collision, fire, fast wear, irregular wear, heel and toe wear or other wear conditions.
- Improper inflation, overloading, high-speed spinup, misapplication, misuse, negligence, racing, chain damage, or improper mounting or demounting.
- Mechanical condition of the vehicle.
- Chip/chunk conditions on tires intended for highway service.
- Ride disturbance after the first 2/32" (inch) treadwear or due to damaged wheels or any vehicle condition.
- Any tire intentionally altered after leaving a Goodyear factory producing tires to change its appearance (example: white inlay on a black tire).
- Tires with weather cracking which were purchased more than four (4) years prior to presentation for adjustment. If you have no proof of purchase date, tires manufactured four (4) or more years prior to presentation are not covered.

- Material added to a tire after leaving a Goodyear factory producing tires (example: tire fillers, sealants, or balancing substances). If the added material is the cause of the tire being removed from service, the tire will not be adjusted.
- Any Goodyear commercial tire with the word "Mileage" on the sidewall.
- Tires removed from service due to improper repairs.
- Loss of time, inconvenience, loss of use of vehicle, incidental or consequential damage.

Note: Some states or provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

This limited warranty is applicable only in the U.S. and Canada.

ADJUSTMENT LIMITATIONS

The retread warranty ends when the treadwear indicators become visible. For casing warranty information refer to section "WHAT IS THE CASING COVERAGE?"

If you are within 100 miles (160 kilometres) of where the retread was purchased, you must return the tire to that outlet to receive warranty consideration.

WHAT ARE YOUR LEGAL RIGHTS?

DISCLAIMER: THIS WARRANTY IS IN LIEU OF, AND GOODYEAR HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND IS MADE BY GOODYEAR OR SHALL BE IMPLIED BY LAW.

LIMITATION OF DAMAGES: IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL GOODYEAR BE LIABLE TO THE BUYER FOR CONSEQUENTIAL, LOST PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, PUNITIVE OR OTHER DAMAGE, COST (INCLUDING FOR REPLACEMENT TRANSPORTATION), EXPENSE OR LOSS OF ANY KIND. SOME STATES OR PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

This warranty gives you specific legal rights and you may also have other rights that vary from state to state and province to province.

Note: No Representative or Dealer has authority to make any representation, promise or agreement on behalf of Goodyear except as stated herein. Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this warranty a representation that a tire failure cannot occur.

Tires replaced on an adjustment basis become the property of The Goodyear Tire & Rubber Company or Goodyear Canada Inc.

SAFETY WARNINGS:

Property damage, serious injury or death may result from:

- **TIRE FAILURE DUE TO UNDERINFLATION/OVERLOADING/MISAPPLICATION.** Follow the vehicle owner's manual or tire placard in vehicle.
- **TIRE FAILURE DUE TO IMPACT DAMAGE/IMPROPER MAINTENANCE.** Tires should be inspected regularly by a qualified technician for signs of damage, such as punctures or impacts.
- **TIRE FAILURE DUE TO IMPROPER REPAIRS.** See U.S. Tire Manufacturers Association (USTMA) established repair procedures at www.ustires.org and/or go to www.goodyear.com/truck for information on proper repair procedures.
- **EXPLOSION OF TIRE/RIM ASSEMBLY DUE TO IMPROPER MOUNTING.** Only specially trained persons should mount tires. When mounting tires, use safety cage and clip-on extension air hose to inflate.
- **FAILURE TO MOUNT RADIAL TIRES ON APPROVED RIMS.**
- **FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING.**
- **TIRE SPINNING.** On slippery surfaces such as snow, mud, ice, etc., do not spin tires in excess of 35 mph (56 kph), as indicated on the speedometer.
- **EXCESSIVE WHEEL SPINNING.** This can also result in tire disintegration or axle failure.

FOR SERVICE ASSISTANCE OR INFORMATION:

1. First contact the nearest Authorized Goodyear Commercial Tire Retailer.
2. If additional assistance is required:
 - In the U.S., write to –
Goodyear Customer Assistance Center
Department 728
200 Innovation Way
Akron, OH 44316
 - In Canada, write to –
Goodyear Customer Assistance Center
450 Kipling Avenue
Toronto, Ont. M8Z 5E1

**EARTHMOVER TIRE
LIMITED WARRANTY
For 20 to 39 Inch Rim Diameter Tires**

WHO IS ELIGIBLE?

You are eligible for the benefits of this Limited Warranty if you are the original purchaser or authorized agent of the original purchaser of new Goodyear 20 to 39 inch rim diameter Grader or Earthmover tires bearing our serial numbers.

WHAT IS COVERED AND FOR HOW LONG?

This Limited Warranty covers all Goodyear 20 to 39 inch rim diameter tires presented for adjustment on or after September 1, 2013. The Limited Warranty is in effect for 4 years commencing on the date of purchase. If proof of the purchase date is not available, the date of manufacture indicated on the serial number will be used as the warranty commencement date. Tires must be presented for consideration within six months of removal from service.

Coverage

If any Goodyear 20 to 39 inch rim diameter tire covered by this Limited Warranty becomes unserviceable due to a covered warranty condition, such tire will, at the option of Goodyear, be repaired or replaced with a comparable new Goodyear tire, discounted on a pro rata basis, or, at Goodyear's option, Goodyear will issue an appropriate credit. The customer charge for replacement will be calculated by multiplying Goodyear's current replacement tire price at the adjustment location (exclusive of taxes), by the percentage determined from the following chart. In the event Goodyear issues a credit, the credit will reflect the discount that would have been included in the foregoing charge.

20 to 39 Inch Rim Diameter Tire Wear (Percent of original non-skid used)									
	0% to 10%	11% to 20%	21% to 30%	31% to 40%	41% to 50%	51% to 60%	61% to 70%	71% to 80%	81% to 100%
PURCHASE DATE	CUSTOMER CHARGE								
12 Months or Less	10%	20%	30%	40%	50%	60%	70%	80%	100%
24 Months or Less	25%	35%	45%	55%	65%	75%	85%	95%	100%
36 Months or Less	50%	60%	70%	80%	90%	95%	100%	100%	100%
48 Months or Less	75%	85%	95%	95%	95%	100%	100%	100%	100%
More than 48months	100%	100%	100%	100%	100%	100%	100%	100%	100%

WARRANTY LIMITATIONS:

This Limited Warranty is applicable to tires purchased from The Goodyear Tire & Rubber Company, Goodyear Canada Inc. or Goodyear International Corporation and their subsidiaries ("Goodyear").

No representative or dealer has authority to make any representation, promise, warranty or agreement on behalf of Goodyear except as stated herein.

Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this limited warranty a representation that a tire failure cannot occur.

WHAT IS NOT COVERED BY THIS WARRANTY?

- Tires purchased more than 48 months prior to presentation for adjustment. Without proof of purchase date, tires manufactured 48 months prior to presentation are not covered.
- Tires removed from service more than six months prior to presentation to Goodyear.

- Tires for which an alternate warranty/guarantee has been negotiated.
- Uniformity or vibration claims on tires purchased more than 6 months prior to presentation for adjustment, or if proof of purchase is not available, more than 6 months after the manufacture date.
- Air retention claims on tires purchased more than 3 months prior to presentation for adjustment, or if proof of purchase is not available, more than 3 months after the manufacture date.
- Irregular wear or tire damage due to: impact breaks, cuts, cut separations, snags, machine damage, wreck, collision, fire, improper inflation, overloading, misapplication, misuse, negligence, operation at excessive speed, rim or chain damage or damage caused by the mechanical condition of the vehicle.
- Tires operating in excess of their rated Ton-Mile-Per-Hour (TMPH) or Tonne-Kilometre-Per-Hour (TKPH) factor. Goodyear uses a 4 hour rolling average for TMPH / TKPH calculations. (A detailed description of TMPH / TKPH ratings may be found in Goodyear Publication: Off-The-Road Tires Engineering Data which can be found at www.goodyearotr.com).
- Tires operating in excess of the rated Work Capability Factor (WCF).
- Tires operated in applications that are inconsistent with the Equipment's specifications or restrictions.
- Tires with improperly seated beads. Knurling impressions from the rim that continue around the bead heel are sufficient evidence of improper seating.
- Tires mounted with "O" rings that are not approved by Goodyear for use with its Earthmover tires.
- Tires that have failed due to material added after original manufacture (example: tire fillers, sealant, ballast or balancing substances). If the added material is the cause of the tire being removed from service, they will not be adjusted.
- The cost of material added after original manufacture (example: tire fillers, sealant, ballast or balancing substances) regardless of removal cause.
- Repairs or Retreads.
- **GOODYEAR EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT INCLUDE LOSS OF TIME, LOSS OF USE OF EQUIPMENT, LOST PROFITS, INCONVENIENCE, COST OF REPLACEMENT EQUIPMENT, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

WHAT ARE YOUR LEGAL RIGHTS?

Some states and provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

OWNERS OBLIGATIONS

- A. You must present the tire to be considered for adjustment to an authorized Goodyear dealer or Goodyear Service Representative within 6 months of removal. See back cover for addresses and telephone numbers of Goodyear Service representatives.
- B. You must pay for taxes, mounting and any additional services you order at the time of adjustment.

For tires imported by or specifically for a Buyer (or his agent), Goodyear's responsibility will be based upon the Cost & Freight Port of Entry tire value prior to payment of import duties.

- C. No claim will be recognized unless the product is inspected and a claim is submitted electronically or on a Goodyear claim form into Goodyear's OTR Adjustment database by a Goodyear Representative. All adjustments are confirmed by mail.
- D. Onboard machine cycle, payload and productivity information must be made available to the authorized Goodyear Dealer or Goodyear Service Representative if requested.
- E. Adjusted tires may be incapacitated. Disposal of the tire is the responsibility of the owner.

 WARNING

Property Damage, Serious Injury or Death may result from:

- ◆ **FAILURE DUE TO UNDERINFLATION/OVERLOADING:**
Follow owner's manual or tire placard placed in the vehicle.
- ◆ **EXPLOSION OF TIRE / RIM ASSEMBLY DUE TO IMPROPER MOUNTING:**
Consider using nitrogen to inflate OTR tires to reduce the risk of explosive tire failure. Only specially trained persons using proper equipment should mount tires.
- ◆ **FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING:**
Before loosening any clamps or nuts that attach a multi-piece rim assembly to a vehicle always completely deflate the tire mounted as a single or both tires in a dual assembly by removing the valve core(s). Never attempt to remove a tire from a rim unless the tire is completely deflated. In both cases above check the valve stem by running a piece of wire through the stem to make sure it is not plugged.
- ◆ **WELDING, BRAZING OR USING ANY TYPE OF HEAT SOURCE ON A MOUNTED TIRE / RIM ASSEMBLY:**
Do not, under any circumstances, attempt to rework, weld, heat or braze any rim components that are cracked, broken or damaged. Replace with new parts or parts that are not cracked, broken or damaged, and which are the same size, type and manufacturer. Consult the rim manufacturer concerning proper replacement components.

FOR ASSISTANCE OR TO FIND THE GOODYEAR DEALER NEAREST YOU:

Please contact the Goodyear Off-The-Road Tire Action Line
200 Innovation Way
Akron, OH. 44316
330 796-0610

CANADIAN DISTRICT OFFICE:

450 Kipling Ave.
Toronto, Ontario M8Z-5E1 416-201-4300

GOODYEAR INTERNATIONAL OFFICES:

European Manager, EMSS

Goodyear S.A.

Avenue Gordon Smith

L-7750 Colmar-Berg Phone 352-8199-2112

Grand Duchy of Luxembourg Fax 352-8199-2131

Vice President OTR Operations (Asia Pacific)

Suite 1, 19 Bishop Street

Jolimont WA, 6014 Phone 011-619-9478-9200

Australia Fax 011-618-9478-6050

Companhia Goodyear do Brasil – Produtos de Borracha

SAC – Customer Service

<http://www.goodyear.com.br/fale-conosco/formulario.html>

sac@goodyear.com

Avenida Paulista, 854 – 8/9 andar

Cep: 01310-913

São Paulo – SP

Brasil Phone 0800 725 7638

..... Fax 55-11-3281-4432

Goodyear de Chile S.A.I.C.

SAC - Customer Service

http://www.goodyear.cl/contact_us.html

infocls@goodyear.com

Hendaya 60 Piso 9

Las Condes – Santiago de Chile..... Phone 0800 00 181

..... Fax 56-2-530-1333

Goodyear del Peru S.A.

SAC - Customer Service

http://www.goodyear.com.pe/contact_us.html

Avenida Argentina 6037 Carmen de la Legua

Callao, Lima Phone 0800 1 9080

..... Fax +511 517 3301

Goodyear de Colombia S.A.

SAC – Customer Service

http://www.goodyear.com.co/contact_us.html

Calle 10 D No 15 – 39 Corregimiento Arroyohondo

Yumbo, Valle del Cauca..... Phone 57 2 6088 525

..... Fax +57 2 6088 413

**EARTHMOVER TIRE
LIMITED WARRANTY
FOR 45, 49, 51, 57, & 63 Inch Rim Diameter Tires**

WHO IS ELIGIBLE?

You are eligible for the benefits of this Limited Warranty if you are the original purchaser or authorized agent of the original purchaser of new Goodyear 45 – 63 inch rim diameter tires bearing Goodyear prescribed serial numbers and your use of these tires has been pre-certified to conform to their capabilities.

WHAT IS COVERED AND FOR HOW LONG?

This Limited Warranty covers all Goodyear 45 – 63 inch rim diameter tires presented for adjustment on or after September 1, 2013. The Limited Warranty is in effect for 18 months commencing on the date of purchase. If proof of the purchase date is not available, the date of manufacture indicated on the serial number will be used as the warranty commencement date. Tires must be presented for consideration within six months of removal from service.

Coverage

If any Goodyear 45 – 63 inch rim diameter tire covered by this Limited Warranty becomes unserviceable due to a covered warranty condition, such tire will, at the option of Goodyear, be repaired or replaced with a comparable new Goodyear tire, discounted on a pro rata basis, or, at Goodyear's option, Goodyear will issue an appropriate credit. The customer charge for replacement will be calculated by multiplying Goodyear's current replacement tire price at the adjustment location (exclusive of taxes), by the percentage determined from the following chart. In the event Goodyear issues a credit, the credit will be in the same amount as the discount that would have been used to calculate the aforementioned customer charge on replacement.

45 – 63 Inch Rim Diameter Tire Wear (Percent of original skid used) /																	
	0% 10%	to	11% 20%	to	21% 30%	to	31% 40%	to	41% 50%	to	51% 60%	to	61% 70%	to	71% 80%	to	81% 100%
TIRE AGE	CUSTOMER CHARGE (as a percent of current replacement tire price)																
6 Months or Less	10%		20%		30%		40%		50%		60%		70%		80%		100%
12 Months or Less	30%		40%		50%		60%		70%		80%		90%		100%		100%
18 Months or Less	50%		60%		70%		80%		90%		100%		100%		100%		100%
More than 18 months	100%		100%		100%		100%		100%		100%		100%		100%		100%

WARRANTY PRE-CERTIFICATION

Your application must be pre-certified by a Goodyear Representative (OTR Regional Sales Manager, OTR Field Engineer or OTR Product Support Manager). This certification may include any of the following: job site audit, TMPH analysis, GPS study, temperature study, and or a review of onboard machine cycle, payload and productivity information. You will receive a numbered Warranty letter for products that meet the pre-certification requirement.

WARRANTY LIMITATIONS

This Limited Warranty is applicable to tires purchased from The Goodyear Tire & Rubber Company or Goodyear Canada Inc., as the case may be. No representative or dealer has authority to make any representation, promise, warranty or agreement on behalf of Goodyear except as stated herein.

Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this limited warranty a representation that a tire failure cannot occur.

WHAT IS NOT COVERED BY THIS WARRANTY?

- Tires purchased more than 18 months prior to presentation for adjustment. Without proof of purchase date, tires manufactured 18 months prior to presentation are not covered.
- Tires removed from service more than six months prior to presentation to Goodyear.
- Tires operated in an application that has not been pre-certified.
- Tires for which an alternate warranty/guarantee has been negotiated and such guarantee documented in writing by an authorized Goodyear representative.
- Uniformity or vibration claims on tires purchased more than 6 months prior to presentation for adjustment, or if proof of purchase is not available, more than 6 months after the manufacture date.
- Air retention claims on tires purchased more than 3 months prior to presentation for adjustment, or if proof of purchase is not available, more than 3 months after the manufacture date.
- Irregular wear or tire damage due to: impact breaks, cuts, cut separations, snags, machine damage, wreck, collision, fire, improper inflation, overloading, misapplication, misuse, negligence, operation at excessive speed, rim or chain damage or damage caused by the mechanical condition of the vehicle.
- Tires operating in excess of their rated Ton-Mile-Per-Hour (TMPH) or Tonne-Kilometre-Per-Hour (TKPH) factor. Goodyear uses a 4 hour rolling average for TMPH / TKPH calculations. (A detailed description of TMPH / TKPH ratings may be found in Goodyear Publication: Off-The-Road Tires Engineering Data which can be found at www.goodyearotr.com).
- Tires operating in excess of the rated Work Capability Factor (WCF).
- Tires operating in applications that are inconsistent with the Equipment's specifications or restrictions.
- Tires with improperly seated beads. Knurling impressions from the rim that continue around the bead heel are sufficient evidence of improper seating.
- Tires mounted with "O" rings that are not approved by Goodyear for use with its Earthmover tires.
- Tires that have failed due to material added after original manufacture (example: tire fillers, sealant, ballast or balancing substances). If the added material is the cause of the tire being removed from service, such tire will not be adjusted.
- The cost of material added after original manufacture (example: tire fillers, sealant, ballast or balancing substances) regardless of removal cause.
- Repairs or Retreads.
- GOODYEAR EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT INCLUDE LOSS OF TIME, LOSS OF USE OF EQUIPMENT, INCONVENIENCE, COST OF REPLACEMENT EQUIPMENT, OR ANY INCIDENTAL AND CONSEQUENTIAL DAMAGES.

WHAT ARE YOUR LEGAL RIGHTS?

Some states and provinces do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

OWNERS OBLIGATIONS

- A. You must present the tire to be considered for adjustment to an authorized Goodyear dealer or Goodyear Service Representative within 6 months of removal. See back cover for addresses and telephone numbers of Goodyear Service representatives.
- B. You must pay for taxes, mounting and any additional services you order at the time of adjustment. For tires imported by or specifically for a Buyer (or his agent), Goodyear's responsibility will be based upon the Cost & Freight Port of Entry tire value prior to payment of import duties.
- C. No claim will be recognized unless the product is inspected and a claim is submitted electronically into Goodyear's OTR Adjustment database by a Goodyear Representative.
- D. Onboard machine cycle, payload and productivity information must be made available to the authorized Goodyear Dealer or Goodyear Service Representative if requested.
- E. Adjusted tires will be incapacitated. Disposal of the tire in full conformity with applicable laws is entirely the responsibility of the owner.

WARNING

Property Damage, Serious Injury or Death may result from:

- ♦ **FAILURE DUE TO UNDERINFLATION/OVERLOADING:**
Follow owner's manual or tire placard placed in the vehicle.
- ♦ **EXPLOSION OF TIRE / RIM ASSEMBLY DUE TO IMPROPER MOUNTING:**
Only specially trained persons using proper equipment should mount tires.
- ♦ **FAILURE TO DEFLATE SINGLE OR DUAL ASSEMBLIES COMPLETELY BEFORE DEMOUNTING:**
Before loosening any clamps or nuts that attach a multi-piece rim assembly to a vehicle always completely deflate the tire mounted as a single or both tires in a dual assembly by removing the valve core(s). Never attempt to remove a tire from a rim unless the tire is completely deflated. In both cases above check the valve stem by running a piece of wire through the stem to make sure it is not plugged.
- ♦ **WELDING, BRAZING OR USING ANY TYPE OF HEAT SOURCE ON A MOUNTED TIRE / RIM ASSEMBLY:**
Do not, under any circumstances, attempt to rework, weld, heat or braze any rim components that are cracked, broken or damaged. Replace with new parts or parts that are not cracked, broken or damaged, and which are the same size, type and manufacturer. Consult the rim manufacturer concerning proper replacement components.

FOR ASSISTANCE OR TO FIND THE GOODYEAR DEALER NEAREST YOU:

Please contact the Goodyear Off-The-Road Tire Action Line
200 Innovation Way
Akron, OH. 44316
1-330-796-0610

CANADIAN DISTRICT OFFICE:

Goodyear Canada Inc.
450 Kipling Ave.
Toronto, Ontario M8Z-5E1416-201-4300

LIMITED WARRANTY LOWER SEAM (UMS) TIRES & PERMAFOAM ADJUSTMENT POLICY

ELIGIBILITY

You are eligible for the benefits of this policy if you are the **original** purchaser or authorized agent of the **original** purchaser of **new** Goodyear:

- Branded UMS tires which are defined as those whose principal application is for specialized service in subsurface mining operations. UMS tires are not intended for over-the-highway, agricultural or other non-underground mining uses.
- Permafoam tire fill, which is a flat-proofing filling agent exclusive to The Goodyear Tire & Rubber Company.

COVERAGE

This policy covers all Goodyear branded UMS tires and Permafoam submitted for adjustment on/after September 1, 2013. If proof of purchase is not available to establish time in service, the tire date of manufacture will be used. Tires must be presented for consideration within six months of removal from service.

Any tire covered by this policy, whether Permafoam filled or not, that becomes unserviceable due to a covered warranty condition will, at the option of Goodyear, be repaired or replaced with a comparable new Goodyear tire on a pro rata basis.

With regards to Permafoam inflated tires, the Permafoam itself will be pro rated on the same basis as the tire in which it was used.

The customer charge for pro rata replacement will be calculated by multiplying Goodyear's current Tire/Permafoam price at the adjustment location (exclusive of taxes), by the percentage determined from the following chart:

TIRE WEAR (percent of original non skid used)

Act % NS	0% to 10%	11% to 20%	21% to 30%	31% to 40%	41% to 50%	51% to 60%	61% to 70%	71% to 80%	81% to 100%
Age*	Customer Charge								
6 or Less	10%	20%	30%	40%	50%	60%	70%	80%	100%
12 or Less	30%	40%	50%	60%	70%	80%	90%	100%	100%
18 or Less	50%	60%	70%	80%	90%	100%	100%	100%	100%
More than 18	100%	100%	100%	100%	100%	100%	100%	100%	100%

*Tire Age in Months

ADJUSTMENT POLICY LIMITATIONS

This Limited Warranty Policy is applicable to **Goodyear Branded UMS tires and Permafoam** purchased from The Goodyear Tire & Rubber Company or Goodyear Canada Inc., and is limited to the United States and Canada.

The following are **NOT** covered by this policy:

- Tires purchased more than 18 months prior.
- No proof of purchase or manufacture date.
- Tires removed from service more than six months prior to presentation to Goodyear.

- Irregular wear or tire damage due to:

Impact breaks	Cuts
Snags	Machine Damage
Wrecks	Collision
Fire	Electrical Shock
Overloading	Misapplication
Misuse	Negligence
Mechanical Condition of the Vehicle	Oil Exposure
Chemical Exposure	Ribbing

- Tires which have failed as a result of adding fill material other than Permafoam applied by Goodyear or its authorized agent to the tire cavity. Examples include sealants, balancing substances, ballast or other fills.
- Additionally, no adjustment credit will be issued for such materials, regardless of whether or not the tire itself is subject to adjustment.
- Loss of time, inconvenience, loss of use of vehicle, incidental or consequential damage.

WHAT ARE YOUR LEGAL RIGHTS?

Some states or provinces do not allow the exclusion or limitation of incidental or consequential damage, so the above limitation or exclusion may not apply to you.

No representative or dealer has authority to make any representation, promise, or agreement on behalf of Goodyear except as stated herein.

Any tire, no matter how well constructed, may fail in service or otherwise become unserviceable due to conditions beyond the control of the manufacturer. Under no circumstances is this warranty a representation that a tire failure cannot occur.

This warranty gives you specific legal rights and you may also have other rights that vary from state to state or province to province.

OWNER'S OBLIGATIONS

- For any underground application, any UMS Tire/Permafoam product deemed unserviceable, you must contact The Goodyear Tire and Rubber Company or authorized Goodyear dealer for assistance. See listing on back cover.
- You must pay for taxes, mounting and any additional services you order at time of Adjustment.
- No claim will be recognized unless submitted on a Goodyear claim form. This form must be completely filled out and submitted by you, the original purchaser of the tire, or your authorized agent.

⚠ WARNING Property Damage, Serious Injury or Death May Result From:

- Tire failure due to overloading.
- Improperly mounted tires
- Only specially trained persons using proper equipment should mount tires.

Certificate Of Completion

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The Goodyear Tire & Rubber Company

200 Innovation Way

Akron, OH 44316

gcs_support@goodyear.com

IP Address: 35.170.89.44

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gcs_support@goodyear.com

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Signer Events

Ryan Waldron

ryan_waldron@goodyear.com

President, North America Consumer

The Goodyear Tire & Rubber Company

Security Level: Email, Account Authentication
(None)**Signature**

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Resent: 4/9/2024 12:29:36 PM

Viewed: 4/9/2024 3:34:43 PM

Signed: 4/9/2024 3:34:56 PM

Electronic Record and Signature Disclosure:

Accepted: 2/13/2024 3:48:05 PM

ID: 9836de74-1607-488c-b8c9-ce1e51acde05

Vimarie Luna-Bryant

vimarie_lunabryant@goodyear.com

The Goodyear Tire & Rubber Company

Security Level: Email, Account Authentication
(None)

Sent: 4/9/2024 3:34:59 PM

Viewed: 4/9/2024 3:35:53 PM

Electronic Record and Signature Disclosure:

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Security Checked

4/9/2024 3:35:53 PM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, The Goodyear Tire & Rubber Company (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact The Goodyear Tire & Rubber Company:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: gcs_support@goodyear.com

To advise The Goodyear Tire & Rubber Company of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at gcs_support@goodyear.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from The Goodyear Tire & Rubber Company

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to gcs_support@goodyear.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with The Goodyear Tire & Rubber Company

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to gcs_support@goodyear.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify The Goodyear Tire & Rubber Company as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by The Goodyear Tire & Rubber Company during the course of my relationship with you.

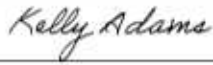
Iowa Department of Administrative Services

Contracts Declaration & Execution Page

Title of Contract: Tires, Tubes, and Services	Bid Proposal Number RFP0223005113	Contract Number 24156
This Agreement is entered into between the State of Iowa (by and through its agency, the Department of Administrative Services) and the Contractor named below:		
State Agency's Name: Iowa Department of Administrative Services (DAS)		
Contractor's Name: Michelin North America, Inc.		
Contract to Begin: April 1, 2024	Date of Expiration: March 31, 2027	Annual Extensions: Three (3)
The parties agree to comply with the terms and conditions and attachments which are by this reference made a part of the Agreement: Section 1 – NASPO Valuepoint Terms and ConditionsPage 2 Section 2 – Scope of Work.....Page 26 Section 3 – Pricing.....Page 34 Section 4 – ContactsPage 36		

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto:

Contractor: Michelin North America, Inc.

By (Authorized Signature) 	Date Signed March 25, 2024
Printed Name and Title of Person Signing Kelly Adams - Government Contract Manager	
Address One Parkway South Greenville, SC 29615	

State of Iowa: Department of Administrative Services – Central Procurement

By (Authorized Signature) 	Date Signed March 28, 2024
Printed Name and Title of Person Signing Karl Wendt, Procurement Manager	
Address 1305 E Walnut ST, Des Moines, IA 50319	

SECTION 1

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

1.1 Definitions

- 1.1.1 **Acceptance** means acceptance of goods and services as set forth in Section 1.9 of this Master Agreement.
- 1.1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity- specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.1.10 Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.1.11 Participating State means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.1.12 Product or Products and Services means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

1.1.13 Purchasing Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

1.2 Term of Master Agreement

1.2.1 Initial Term

The initial term of this Master Agreement is for three (3) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional one-year terms at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

1.2.2 Amendment Limitations

The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

1.2.3 Amendment Term

The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

1.3 Pricing, Payment & Leasing

1.3.1 Pricing

The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

1.3.1.1 All prices and rates must be guaranteed for the initial six (6) month term of the Master Agreement.

1.3.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least six (6) months prior to the effective date.

1.3.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

1.3.1.4 No retroactive adjustments to prices or rates will be allowed.

1.3.2 Payment

Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within sixty (60) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After sixty (60) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

1.3.2.1 Michelin authorized dealers will be selling Michelin products on their local books.

1.3.2.2 Participating Entity is not paying Michelin.

1.3.3 Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

1.4 Ordering

1.4.1 Order Numbers

Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

1.4.2 Quotes

Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

1.4.3 Applicable Rules

Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

1.4.4 Required Documentation

Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

1.4.5 Term of Purchase

Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

1.4.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

1.4.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

1.4.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

1.4.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

1.4.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master

Agreement, notwithstanding the term of any such indefinite delivery order agreement.

1.4.6 Order Form Requirements

All Orders pursuant to this Master Agreement, at a minimum, must include:

- 1.4.6.1** The services or supplies being delivered;
- 1.4.6.2** A shipping address and other delivery requirements, if any;
- 1.4.6.3** A billing address;
- 1.4.6.4** Purchasing Entity contact information;
- 1.4.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 1.4.6.6** A not-to-exceed total for the products or services being ordered; and
- 1.4.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

1.4.7 Communication

All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

1.4.8 Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

1.5 Order of Precedence

1.5.1 Order

Any Order placed under this Master Agreement will consist of the following documents:

- 1.5.1.1** A Participating Entity's Participating Addendum ("PA");
- 1.5.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;

1.5.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;

1.5.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

1.5.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

1.5.2 Conflict

These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

1.5.3 Participating Addenda

Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

1.6 Participants and Scope

1.6.1 Requirement for a Participating Addendum

Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

1.6.2 Applicability of Master Agreement

NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

1.6.3 Authorized Use

Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and

eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

1.6.4 Obligated Entities

Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

1.6.5 Notice of Participating Addendum

Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

1.6.6 Eligibility for a Participating Addendum

Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

1.6.7 Prohibition on Resale

Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

1.6.8 Individual Customers

Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

1.6.9 Release of Information

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

1.6.10 No Representations

The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

1.7 NASPO ValuePoint Provisions

1.7.1 Applicability

NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section 1.5 are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

1.7.2 Administrative Fees

1.7.2.1 NASPO ValuePoint Fee

Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

1.7.2.2 State Imposed Fees

Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

1.7.3 NASPO ValuePoint Summary and Detailed Usage Reports

1.7.3.1 Sales Data Reporting

In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the

ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

1.7.3.2 Summary Sales Data

"Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

1.7.3.3 Detailed Sales Data

"Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

1.7.3.4 Sales Data Crosswalks

Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor's part number or SKU for each Product in Contractor's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change.

1.7.3.5 Executive Summary

Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

1.7.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

1.7.4.1 Staff Education

Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

1.7.4.2 Onboarding Plan

Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

1.7.4.3 Annual Contract Performance Review

Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

1.7.4.4 Use of NASPO ValuePoint Logo

The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

1.7.4.5 Obligation to Act in Good Faith

The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master

Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section 1.7. Nothing in this Section 1.7.4.5 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

1.7.5 Cancellation

In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

1.7.6 Canadian Participation

Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

1.7.7 Additional Agreement with NASPO

Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

1.8 Shipping and Delivery

1.8.1 Shipping Terms

All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

1.8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance after delivery when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

1.8.2 Minimum Shipping

The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

1.8.3 Inside Deliveries

To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

1.8.4 Packaging

All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

1.9 Inspection and Acceptance

1.9.1 Laws and Regulations

Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

1.9.2 Applicability

Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 1.9 will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

1.9.3 Inspection

All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

1.9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

1.9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any

resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

1.9.4 Failure to Conform

If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

1.9.5 Acceptance Testing

Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

1.9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

1.9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

1.9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

1.9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

1.9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

1.10 Warranty

Michelin's written Limited Warranty and Owner's Manual shall apply to applicable Michelin products. Michelin's written Limited Warranty and Owner's Manual may be amended from time to time. If a Michelin product is involved in, or suspected to have caused or contributed to the cause of an accident, the Fleet Account shall promptly notify Michelin's local commercial representative. In the event that Michelin desires to inspect any such Michelin product, the Fleet Account shall arrange for transportation at the expense of Michelin in accordance with its

instructions. EXCEPT AS EXPRESSLY STATED IN THE LIMITED WARRANTY, MICHELIN HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

1.11 Product Title

1.11.1 Conveyance of Title

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

1.12 Indemnification

1.12.1 General Indemnification

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

1.12.2 Intellectual Property Indemnification

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

1.12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

1.12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

1.12.2.1.2 specified by the Contractor to work with the Product;

1.12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

1.12.2.1.4 reasonably expected to be used in combination with the Product.

- 1.12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 1.12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 1.12.2.4** Unless otherwise set forth herein, Section 1.12 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

1.13 Insurance

1.3.1 Term

Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

1.3.2 Class

Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

1.3.3 Coverage

Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

- 1.3.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;

1.3.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

1.3.3.3 Contractor is self-insured for product liability, with coverages similar to those under its Commercial General Liability.

1.3.4 Notice of Cancellation

Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

1.3.5 Notice of Endorsement

Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

1.3.6 Participating Entities

Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

1.3.7 Furnishing of Certificates

Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

1.3.8 Disclaimer

Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

1.14 General Provisions

1.4.1 Records Administration and Audit

1.4.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect

performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

- 1.4.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 1.4.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

1.4.2 Confidentiality, Non-Disclosure, and Injunctive Relief

1.4.2.1 Confidentiality

Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

- 1.4.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").
- 1.4.2.1.2** Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

1.4.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

1.4.2.2 Non-Disclosure

Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

1.4.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

1.4.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

1.4.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

1.4.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance,

audits, and evidence of the performance of this Master Agreement.

1.4.2.3 Injunctive Relief

Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

1.4.2.4 Purchasing Entity Law

These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

1.4.2.5 NASPO ValuePoint

The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

1.4.2.6 Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

1.4.2.7 Contractor Confidential Information

Contractor Confidential information shall mean information in any form, disclosed or made available by Contractor that meets the applicable jurisdiction's definition of confidential, proprietary, or otherwise non-public information. Contractor Confidential Information shall not include any information that: (i) was rightfully in the receiving party's possession prior to Contractor's disclosure without any obligation to maintain its confidentiality; (ii) was independently developed by the receiving party or its Partners without the use of or reference to Contractor Confidential Information; (iii) is now, or hereafter becomes, publicly available other than through disclosure by the receiving party in breach of this Master Agreement or any Participating Addendum; (iv) is identified by the Contractor to receiving party as no longer confidential or (v) is, or is included in, any Contract Document, except for the sections identified as confidential in the Summary section of the Master Agreement. Contractor Confidential Information shall be afforded the same protections as Confidential Information under Section 1.4.2; provided, however, that nothing herein shall prohibit Lead State or any Participating

Entity from disclosing any Contractor Confidential Information to the extent required by applicable law (including, for clarity, applicable freedom of information laws).

1.4.3 Assignment/Subcontracts

1.4.3.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

1.4.3.2 The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

1.4.4 Changes in Contractor Representation

The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

1.4.5 Independent Contractor

Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

1.4.6 Cancellation

Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

1.4.7 Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master

Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

1.4.8 Defaults and Remedies

1.4.8.1 The occurrence of any of the following events will be an event of default under this Master Agreement:

1.4.8.1.1 Nonperformance of contractual requirements;

1.4.8.1.2 A material breach of any term or condition of this Master Agreement;

1.4.8.1.3 Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

1.4.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

1.4.8.1.5 Any default specified in another section of this Master Agreement.

1.4.8.2 Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including to the extent provided for under this Master Agreement.

1.4.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

1.4.8.3.1 Any remedy provided by law;

1.4.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

1.4.8.3.3 Suspension of Contractor from being able to respond to future bid solicitations;

1.4.8.3.4 Suspension of Contractor's performance; and

1.4.8.3.5 Withholding of payment until the default is remedied.

1.4.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

1.4.9 Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

1.4.10 Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

1.4.11 No Waiver of Sovereign Immunity

1.4.11.1 In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the

United States or otherwise, from any claim or from the jurisdiction of any court.

- 1.4.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

1.4.12 Governing Law and Venue

- 1.4.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 1.4.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 1.4.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

1.4.13 Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

1.4.14 Survivability

Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

SECTION 2

Scope of Work

2.1 This Scope of Work describes the Deliverables being sought through this Contract.

2.2 Master Agreement Objectives

The purpose of this Master Agreement(s) is to provide competitive pricing for tire products and services through retail distribution networks to all Participating States.

This Master Agreement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the using entities chief procurement official and compliance with local statutory and regulatory provisions.

2.3 Master Agreement Deliverables

The scope of this Contract includes specific full lines of tires and tubes as covered in the Manufacturer's Price List (MPL) and related services in the subcategories listed below.

2.3.1 Tires and Tubes Subcategories

1. Pursuit and Performance Tires
2. Automobile/Passenger Vehicles
3. Light Duty Trucks: Radial and Bias
4. Medium Commercial/Heavy Duty Trucks/Buses
5. Off-the-Road OTR: Radial and Bias
6. Agriculture/Farm
7. Industrial
8. Specialty Tires
9. EV Tires
10. Retread

2.3.2 Product and Service Specifications

2.3.2.1 General Tire Specifications

The quality for all tires shall be the equivalent or greater than Original Equipment Manufacturers (OEM) as original for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tires supplied must be marked with Federal Department of Transportation (DOT) compliance symbol. Tires must conform to all applicable Federal Specifications.

All tires in subcategories one (1) through nine (9) must be new, unused and must have been produced or manufacturer within the last one (1) year prior to delivery to the purchasing Entity. Should an Authorized Dealer deliver a tire(s) with a manufacturing date exceeding the one (1) year limit, the Authorized

Dealer must pick up the expired tire(s) and replace them with tire(s) that meet the manufacturing date requirement for no additional fee to the Purchasing Entity.

All tires must have the size, manufacturer's name, DOT number, serial number, and indication of body material molded in side-wall at time of cure. The application of any of the above by any other means such as branding, application of decals, etc. must not be acceptable.

Tires offered must have been tested to meet or exceed American Society of Testing and Materials (ASTM) Standard F1922 for highway tires, F1923 for Off Road/Low Speed tires, and meet operations performance levels and marking requirements of Federal Standards FMVSS 109 for new pneumatic passenger tires, FMVSS 139 for new pneumatic radial tires for light vehicles, and FMVSS 119 for new pneumatic non-passenger Multi-Passenger Vehicles (MPVs), trucks, buses, and trailers.

2.3.2.1.1 Pursuit and Performance Tires

Pursuit and performance tires include tires for police and other pursuit vehicles and for other high-speed, performance vehicles. This subcategory includes any tire that is H, V, W, Y, or ZR rated or above. An H rating is the minimum speed rating for tires in this subcategory.

Tires must be new, standard production tires expressly designed and certified by manufacturer for high speed operation and must exhibit exceptional safety, stability, handling, and stopping characteristics. Contractor must maintain evidence/certifications that such tires meet all laboratory test and size requirements of Federal Standards MVSS 109.

2.3.2.1.2 Automobile/Passenger Vehicles

These tires include common passenger car tires and are designated with a "P" at the beginning of the tire size. Common applications for these types of tires would be passenger cars and minivans.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.3 Light Duty Trucks Radial and Bias

These tires can usually be identified by the letters "LT" at the beginning of the tire size. Common applications for these types of tires would be pickup trucks, sport utility vehicles, full size vans, and some trailers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.4 Medium Commercial/Heavy Duty Trucks/Buses

These tires do not have a letter at the beginning of the tire size. Common applications for these types of tires would be medium and heavy trucks, buses, semi-trucks, cargo, vans, and trailer tires. Tires in this subcategory have a diameter that is equal to or greater than twenty (20) inches. Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.5 Off-the-Road OTR and Low Speed Off Highway Tires (Radial and Bias)

Common applications are heavy construction equipment such as wheel loaders, backhoes, graders, and trenchers.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.6 Agricultural/Farm (Radial and Bias)

Common applications are farm tractors, wagons, harvesters, and other farm implements requiring tires with high traction qualities and tires with high flotation qualities at low inflation pressures.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.7 Industrial

Common applications are specialty industrial equipment, some construction equipment, and material handling equipment such as skid loaders and forklifts and include pneumatic, nonpneumatic, and press on tires.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.8 Specialty Tires

Specialty tires may include, but are not limited to, recreational, all-terrain-vehicle (ATV), boat trailer, yard and garden, and aviation tires. This category also includes all other tires not identified above. Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.9 Electric Vehicle (EV) Tires

Common applications are electric sedans and trucks requiring tires with high load index.

Tires must be of standard OEM quality equal to or superior in every respect to those normally furnished as original equipment for such vehicles.

2.3.2.1.10 Retread Tires – Optional Service

A retread tire undergoes a manufacturing process to replace the worn tread on used tires to extend the longevity of the tire.

2.3.2.2 Low Roll Resistance Tires

Contractor must provide certified, low rolling resistance tires and identify them as low roll resistance tires in the MPL. Contractor is to also provide the fuel economy rating of the low roll resistance tires offered, for example, miles per gallon fuel efficiency increase or percentage of fuel economy increase.

2.3.2.3 Tubes

All inner tubes must be standard production first line, heavy duty butyl tubes or natural rubber of fresh stock. All tubes must be of quality not less than the tubes normally furnished in representative quantities by OEM as original equipment for automobiles, trucks, tractors, buses, backhoes, loaders, motor graders, and other heavy equipment. Tubes must conform to all applicable federal specifications. All tubes must be new and must have been produced or manufactured within the last one (1) year prior to installation or delivery to the purchasing Entity.

2.3.2.4 Detailed Services Specifications

Contractor is asked to provide pricing on each of the below mentioned listed services that may be performed by their approved Authorized Dealers to include any parts and labor. If a Contractor does not offer one of the items listed below, the Contractor should mark it as NA. Approved Authorized Dealers must honor the services pricing in the Contract.

Contractor must provide a list of its approved Authorized Dealers for each state. The Contractor is responsible for the timeliness and quality of all services provided by the approved Distributors under this Contract. NASPO ValuePoint Participating States may elect to use these services listed below at their discretion.

Product installation and repairs, such as mounting, rotation, and balancing, must be in accordance with manufacturer's recommended procedures of warranted new virgin-product tires for each product subcategory.

a. Tire installation with purchase in store includes dismount of used tires and tubes

b. Change tire, dismount and mount

- c. Flat repair, remove, repair and mount
- d. Flat repair, off vehicle
- e. Rotate mounted tires (per tire)
- f. New valve stem rubber or metal
- g. Wheel balance – computer spin balance (per spin)
- h. Wheel balance – computer spin balance and valve stem combination
- i. Foam filled
- j. Alignment Services – If Contractor provides this service, the prices should be listed in this Contract as a percentage discount from list price for parts and a fixed price per hour for labor.
- k. Studding – Metal implants in the surface of the tread to improve traction on ice.
- l. Siping – The small slots that are cut or molded into a tire tread surface. These slots are meant to aid in increasing traction in snow, ice, mud, and wet road surfaces.
- m. Used tire recycle and disposal fee (per tire) – Some NASPO ValuePoint Participating States have statutes that only allow up to a specific fee to be charged. The Participating States with statute regulated fee caps will only pay the proposed amount or the statute price, whichever is lower.
- n. Bulk Disposal of Tires (Optional Service) – This is considered an additional chargeable service.

Contractor must, when requested, place trailers on-site at any requesting using Entity for the disposal of scrap tires. Contractor must, on a will-call basis, within five (5) days' notification from requesting Purchasing Entity, remove and replace full trailers with empty trailers. Trailer capacity must be a minimum of six (6) tons or scrap tires. Contractor must dispose of scrap tires that are removed in Contractor provided trailers at an approved waste tire recovery area, other approved disposal methods. Contractor must invoice for disposal of scrap tires at the established Master Agreement price per ton. Contractor must submit with invoice, documentation of scrap tire disposal weight from a disposal site, if this is the method of disposal utilized by the Contractor. Contractor may return scrap tires mounted to wheels to Purchasing Entity if dismounting is required. With prior approval from the designated Purchasing Entity contract representative, Contractor may dismount scrap tires from

wheels and invoice at the established Master Agreement price for such service. Contractor must return wheels to purchasing Entity for disposition unless instructed otherwise by purchasing Entity.

o. Tire Pressure Monitoring System (TPMS) – Vehicles all come with a TPMS which is built into the tire valve. When new tires are mounted on a vehicle with the TPMS system, the TPMS system is reinstalled with a new washer, valve, and valve cap (TPMS service kit).

2.3.3 Customer Service

2.3.3.1 The Contractor must provide a website dedicated to any Participating State that includes, but, is not limited to, services, cost, technical specifications, online ordering, and payment capability.

2.3.3.2 The Contractor must provide a dedicated customer service representative(s) for the Master Agreement. The representative must be available to respond to all Participating Entity inquiries within two (2) business day. The representative must be available to resolve any customer service issues.

2.3.3.3 The Contractor must report Key Performance Indicators (KPIs) measuring their customer service and response time. The KPI report must be issued to the Contract Administrator no later than sixty (60) days following the end of each calendar year.

2.3.3.4 A Contractor representative(s) must attend an annual meeting with the Lead State Contract Administrator and sourcing team to review usage and discuss any issues that are occurring, if requested. The Contractor must be prepared to discuss overall effectiveness of contract, total sales, and customer service. The representative must be responsible to conduct and/or coordinate sales meetings, training sessions, and product demonstrations if required.

2.3.4 Multi-Accounts within a Using Entity

Using Entities may have different agencies, departments, or divisions utilizing the goods and/or services provided by Contractor(s). Therefore, Contractor(s) must be able to process multiple individual accounts and unique users within a Purchasing Entity.

2.3.5 Payment Types

Contractor must accept mailed and electronic payments/P-Cards and cannot charge additional transaction fees under this Master Agreement. Contractor must accept each Participating Entity's payment terms established in their Participating Addendum.

2.3.6 Recruiting and Education of Approved Distributors

Contractor must agree to continue recruiting dealers to become Approved Distributors for Participating Entities for the duration of the Master Agreement. Contractor must further agree to continue outreach with regards to the training of Approved Distributors on the terms and requirements of the Master Agreement and relaying billing procedures for each respective Participating Entity.

2.4 Contractor Responsibilities and Tasks

2.4.1 Administrative Fees

- 2.4.1.1** The Contractor must pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes and shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the Contract pricing.
- 2.4.1.2** Additionally, some Participating Entities may require an additional administrative fee be paid directly to the state only on purchases made within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments must be incorporated into the Participating Addendum that is made part of this Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for such purchased made by Purchasing Entities within the jurisdiction of the state. All such payments must not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee must be based on the gross amount of all sales (less any charges for taxes and shipping) at the adjusted prices (if any) in Participating Addenda.

2.4.2 NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor must provide the following NASPO ValuePoint reports.

- 2.4.2.1** Summary Sales Data – The Contractor must submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at: <https://calculator.naspovaluepoint.org/>
- 2.4.2.2** Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating State. Plans must include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- 2.4.2.3** Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Participating Entities proposed terms and conditions, as deemed important to the Participating Entity, for possible inclusion into the Participating Addendum. Contractor must ensure that their sales force is aware of this contracting option.
- 2.4.2.4** Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include

a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of administrative fees.

2.4.3 Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial six (6) month period of the Master Agreement. Following the initial six (6) month period of the Master Agreement, the Contractor may request for a price or rate adjustment for an equal guarantee period of six (6) months, and must be made at least sixty (60) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement must not be effective unless approved by the Lead State. No retroactive adjustments to prices or rate must be allowed.

2.5 Lead State Responsibilities and Tasks

2.5.1 Adjustment in Pricing

The Lead State Contract Administrator and Multistate Sourcing Team must review the Contractor's request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead State Contact must notify the Contractor their requested price or rate adjustment was approved or must be resubmitted for approval at least thirty (30) days prior to the effective date.

2.5.2 Contract Extensions

The Lead State Contract Administrator must give the Contractor written notice of its intent whether to exercise each renewal option no later than ninety (90) days before the end of the Contract's then-current term.

2.5.3 Annual Review Meeting

The Lead State Contract Administrator must coordinate a date and time that aligns with the Contractor, Contract Administrator, and Multistate Sourcing Teams schedule for the annual review meeting. The meeting must be held in Des Moines, Iowa.

2.5.4 Participating Addendum Escalation Contact

The Lead State Contract Administrator must be the escalation contact for a Participating Entity when the Contractor fails to respond to correspondence with the Participating Entity or if an issue or problem is not resolved in a timely fashion.

SECTION 3 Pricing

3.1 Tires

Tires and Tubes by Subcategory				
Subcategory #	Tire and Tube Type	Percent Discount	MPL Name	MP: Date
B1	Pursuit and Performance Tires	50%	Gov_NASPO	4/1/2024
B2	Automobile/Passenger Vehicles	50%	Gov_NASPO	4/1/2024
B3	Light Duty Trucks:	50%	Gov_NASPO	4/1/2024
	3a. Radial	50%	Gov_NASPO	4/1/2024
	3b. Bias	50%	Gov_NASPO	4/1/2024
B4	Medium Commercial/Heavy Duty Trucks/Buses	60%	Gov_NASPO	4/1/2024
B5	Off Road	50%	Gov_NASPO	4/1/2024
	5a. Off Road Radial	50%	Gov_NASPO	4/1/2024
	5b. Off Road Bias	50%	Gov_NASPO	4/1/2024
B6	Agriculture/Farm	50%	Gov_NASPO	4/1/2024
B7	Industrial Tires	50%	Gov_NASPO	4/1/2024
B8	Specialty Tires	50%	Gov_NASPO	4/1/2024
B9	EV Tires	50%	Gov_NASPO	4/1/2024
B10	Retread	50%	Gov_NASPO	4/1/2024

3.2 Services

NASPO ValuePoint Pricing for Services										
Type of Service	Product Category	Sub-Category #1	Product Sub-Category #5	Product Sub-Category #6	Product Sub-Category #9	Product Category	Sub-Category #6	Product Sub-Category #7	Product Sub-Category #8	Product Sub-Category #10
	Pursuit, Performance, Passenger, Automobile	Light Duty Trucks	Medium Commercial/Heavy Duty/Bus		Off Road	Agriculture/Farm	Industrial	Specialty	EV Tires	Retread
			Single	Dual						
1. Tire installation w/purchase in store, includes dismount of used tire and tubes (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
2. Change tire, dismount and mount	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
3. Flat Repair, remove, repair and mount	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
4. Flat repair, off vehicle	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
5. Rotate mounted tires (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
6. New valve stem rubber or metal (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
7. Wheel balance-computer spin balance (Per Tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
8. Wheel balance/valve stem combo (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
9. Alignment services (Minor parts shall be included in the pricing of the individual services below.)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
9a. Standard two wheel alignment	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
9b. Four wheel alignment	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
9c. Bushing & jam alignment	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
10. Studding (per tire) - To be performed on new tires only.	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
11. Sizing (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
12. Used tire recycle/disposal fee (per tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
13. Bulk tire disposal (min. of six tons capacity)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ
14. Tire pressure monitoring kit (per Tire)	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ	LDQ

3.3 Price and Rate Guarantee Period

The percentage discounts off MPL for tires and tubes must remain the same for the duration of the Contract. The Contractor will provide an updated tire and tube price list annually with updated effective dates.

Tire and tube pricing updates are allowed annually. A request for price increase must be submitted to the Lead State Contract Administrator sixty (60) days prior to March 31 each year for approval by the Lead State. Acceptable supporting documentation could include providing a comparison of indices from the Producer Price Index which show an increase in the tire manufacturing costs over a period of several years. Acceptable supporting documentation could also include a copy of a letter from a supplier stating they are increasing their price to the Contractor. The Lead State will determine whether the supporting documentation provided is sufficient to justify the requested price increase and reserves the right to clarify or request additional documentation.

The Lead State will provide written acceptance or denial of the proposed price increases to the Contractor within 30 days of receipt of the request for price adjustment.

SECTION 4 CONTACTS

- 4.1 Michelin**
Kelly Adams
864.630.3979
kelly.adams@michelin.com
- 4.2 State of Iowa – DAS/Procurement Contact**
Karl Wendt
515.281.7073
karl.wendt@iowa.gov
- 4.3 NASPO-Valuepoint**
Josh Descoteaux
589.551.0958
jdescoteaux@naspo.org

SECTION 3 PRICING

3.1 Tire Pricing

Tire pricing includes all anticipated charges, including but not limited to, freight to dealer locations, cost of product and services, transaction fees, overhead, profits, and other costs or expenses incidental to the Contractor's performance. Tire and Tube pricing does not include delivery to Purchasing Entities. Contractor's discount off of Manufacturer's Price List (MPL) pricing is shown below:

Tires and Tubes by Subcategory				
Subcategory #	Tire and Tube Type	Percent Discount	MPL Name	MP: Date
B1	Pursuit and Performance Tires	52.50%	Goodyear Tire & Rubber Company	1/1/2024
B2	Automobile/Passenger Vehicles	48%	Goodyear Tire & Rubber Company	1/1/2024
B3	Light Duty Trucks:	48%	Goodyear Tire & Rubber Company	1/1/2024
	3a. Radial	48%	Goodyear Tire & Rubber Company	1/1/2024
	3b. Bias	48%	Goodyear Tire & Rubber Company	1/1/2024
B4	Medium Commercial/Heavy Duty Trucks/Buses	60%	Goodyear Tire & Rubber Company	1/1/2024
B5	Off Road	30%	Goodyear Tire & Rubber Company	1/1/2024
	5a. Off Road Radial	30%	Goodyear Tire & Rubber Company	1/1/2024
	5b. Off Road Bias	30%	Goodyear Tire & Rubber Company	1/1/2024
B6	Agriculture/Farm	NA	NA	NA
B7	Industrial Tires	30%	Goodyear Tire & Rubber Company	1/1/2024
B8	Specialty Tires	NA	NA	NA
B9	EV Tires	48%	Goodyear Tire & Rubber Company	1/1/2024
B10	Retread	73%	Goodyear Tire & Rubber Company	1/1/2024

3.2 Tire Services Pricing

Tire services include all minor parts and labor as a total service rate. Flat rate pricing and availability of services is shown below:

Product Code 9	Product Code 9 Desc	Tire Type	Price	NASPO Sub-Category	Type of Service
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	Pursuit, Performance, Passenger, Automobile	Wheel balance-computer spin balance (Per Tire)
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	Light Duty Trucks	Wheel balance-computer spin balance (Per Tire)
044220000	GOV WHEEL BALANCE - COMPUTER SPIN	SV	\$14.00	EV Tires	Wheel balance-computer spin balance (Per Tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	Pursuit, Performance, Passenger, Automobile	New valve stem rubber (per tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	Light Duty Trucks	New valve stem rubber (per tire)
041270000	GOV NEW VALVE STEM	SV	\$3.55	EV Tires	New valve stem rubber (per tire)

041270000	GOV NEW VALVE STEM	SV	\$7.95	Pursuit, Performance, Passenger, Automobile	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$7.95	Light Duty Trucks	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$7.95	EV Tires	New valve stem metal (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Medium Commercial/ Heavy Duty/Bus (Single)	New valve stem (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Medium Commercial/ Heavy Duty/Bus (Dual)	New valve stem (per tire)
041270000	GOV NEW VALVE STEM	SV	\$11.00	Retread	New valve stem (per tire)
040476000	GOV AUTO INSTALL-NOT PURCH IN STORE	SV	\$10.15	EV Tires	Change tire, dismount and mount
040476000	GOV AUTO INSTALL-NOT PURCH IN STORE	SV	\$10.15	Pursuit, Performance, Passenger, Automobile	Change tire, dismount and mount
040478000	GOV CHANGE TIRE,DISM & MOUNT-LT (C,D,E)	SV	\$8.00	Light Duty Trucks	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	Pursuit, Performance, Passenger, Automobile	Wheel balance/Rubber Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	Light Duty Trucks	Wheel balance/Rubber Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$17.55	EV Tires	Wheel balance/Rubber Valve stem combo (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	Pursuit, Performance, Passenger, Automobile	Rotate mounted tires (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	Light Duty Trucks	Rotate mounted tires (per tire)
046884000	GOV ROTATE MOUNTED TIRES	SV	\$4.10	EV Tires	Rotate mounted tires (per tire)
040477000	GOV LT TIRE INSTALL-NOT PURCH IN STORE	SV	\$11.80	Light Duty Trucks	Change tire, dismount and mount
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$4.00	Pursuit, Performance, Passenger, Automobile	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$6.00	Light Duty Trucks	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$4.00	EV Tires	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Medium Commercial/ Heavy Duty/Bus (Single)	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Used tire recycle/disposal fee (per tire)
040488000	SURRENDERED TIRE SCRAP CHARGE	SV	\$10.00	Retread	Used tire recycle/disposal fee (per tire)
040479000	GOV MT/DISM 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Medium Commercial/ Heavy Duty/Bus (Single)	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
040479000	GOV MT/DISM 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Retread	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)

040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Medium Commercial/ Heavy Duty/Bus (Single)	Change tire, dismount and mount
040479000	GOV MT/DISMT 17.5" & UP RIM DIAM OUTSIDE	SV	\$38.00	Retread	Change tire, dismount and mount
046993000	GOV MED COM INSTALL (DUAL)	SV	\$40.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
046993000	GOV MED COM INSTALL (DUAL)	SV	\$40.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Change tire, dismount and mount
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Medium Commercial/ Heavy Duty/Bus (Single)	Wheel balance-computer spin balance (Per Tire)
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Medium Commercial/ Heavy Duty/Bus (Dual)	Wheel balance-computer spin balance (Per Tire)
044171000	WHEEL BALANCING - COMM TRK GOVT.	SV	\$42.50	Retread	Wheel balance-computer spin balance (Per Tire)
046996000	GOV WHEEL BALANCE WITH VALVE (DUAL)	SV	\$53.50	Medium Commercial/ Heavy Duty/Bus (Dual)	Wheel balance/Valve stem combo (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Medium Commercial/ Heavy Duty/Bus (Single)	Rotate mounted tires (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Medium Commercial/ Heavy Duty/Bus (Dual)	Rotate mounted tires (per tire)
046883000	GOV COM-LARGE TRUCK ROTATE	SV	\$29.00	Retread	Rotate mounted tires (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$53.50	Medium Commercial/ Heavy Duty/Bus (Single)	Wheel balance/Valve stem combo (per tire)
044218000	GOV WHEEL BALANCE WITH VALVE	SV	\$53.50	Retread	Wheel balance/Valve stem combo (per tire)
040478000	GOV CHANGE TIRE,DISM & MOUNT-PASS/PURSUIT	SV	\$8.00	EV Tires	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)
040478000	GOV CHANGE TIRE,DISM & MOUNT-PASS/PURSUIT	SV	\$8.00	Pursuit, Performance, Passenger, Automobile	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)

3.3 Internal Controls

Contractor has incorporated internal controls based on product code pricing. Contractor shall not bill the Purchasing Entity for product code line items where the billed price is greater than the contract rate based on their internal controls in an effort to keep billing compliant with the Contract.

Michelin North America, Inc.

PRICE LIST DATE: **4/1/2024**

Tires and Tubes by Subcategory				
Subcategory #	Tire and Tube Type	Percent Discount	MPL Name	MP: Date
B1	Pursuit and Performance Tires	50%	Gov_NASPO	4/1/2024
B2	Automobile/Passenger Vehicles	50%	Gov_NASPO	4/1/2024
B3	Light Duty Trucks:	50%	Gov_NASPO	4/1/2024
	3a. Radial	50%	Gov_NASPO	4/1/2024
	3b. Bias	50%	Gov_NASPO	4/1/2024
B4	Medium Commercial/Heavy Duty Trucks/Buses	60%	Gov_NASPO	4/1/2024
B5	Off Road	50%	Gov_NASPO	4/1/2024
	5a. Off Road Radial	50%	Gov_NASPO	4/1/2024
	5b. Off Road Bias	50%	Gov_NASPO	4/1/2024
B6	Agriculture/Farm	50%	Gov_NASPO	4/1/2024
B7	Industrial Tires	50%	Gov_NASPO	4/1/2024
B8	Specialty Tires	50%	Gov_NASPO	4/1/2024
B9	EV Tires	50%	Gov_NASPO	4/1/2024
B10	Retread	50%	Gov_NASPO	4/1/2024

NASPO ValuePoint I					
Type of Service		Product Sub-Category 1&2	Product Sub-Category #3	Product Sub-Category #4	
		Pursuit, Performance, Passenger, Automobile	Light Duty Trucks	Medium Commercial/ Heavy Duty/Bus	
				Single	Dual
1	Tire Installation w/purchase in store includes dismount of used tires and tubes (per tire)	PQL (Price Qouted Locally by Dealer)	PQL	PQL	PQL
2	Change tire, dismount and mount	PQL	PQL	PQL	PQL
3	Flat Repair, remove, repair and mount	PQL	PQL	PQL	PQL
4	Flat repair, off vehicle	PQL	PQL	PQL	PQL
5	Rotate mounted tires (per tire)	PQL	PQL	PQL	PQL
6	New valve stem rubber or metal (per tire)	PQL	PQL	PQL	PQL
7	Wheel balance-computer spin balance (Per Tire)	PQL	PQL	PQL	PQL
8	Wheel balance/Valve stem combo (per tire)	PQL	PQL	PQL	PQL

9	Alignment services (Minor parts shall be included in the pricing of the individual services below.)	PQL	PQL	PQL	PQL
	9a. Standard two wheel alignment	PQL	PQL	PQL	PQL
	9b. Four wheel alignment	PQL	PQL	PQL	PQL
	9c. Bushing/cam alignment	PQL	PQL	PQL	PQL
10	Studding (per tire) - To be performed on new tires only.	PQL	PQL	PQL	PQL
11	Siping (per tire)	PQL	PQL	PQL	PQL
12	Used tire recycle/disposal fee (per tire)	PQL	PQL	PQL	PQL
13	Bulk tire disposal (min. of six tons capacity)	PQL	PQL	PQL	PQL
14	Tire pressure monitoring kit (per Tire)	PQL	PQL	PQL	PQL

Pricing for Services

Product Sub-Category #5	Product Sub-Category #6	Product Sub-Category #7	Product Sub-Category #8	Product Sub-Category #9	Product Sub-Category #10
Off Road	Agriculture/ Farm	Industrial	Specialty	EV Tires	Retread
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL

PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL
PQL	PQL	PQL	PQL	PQL	PQL



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU: Chris Brown, Public Works Director
FROM: Alan Pugh, Staff Engineer
SUBJECT: **Approval of a landowner agreement with the Illinois River Watershed Partnership (IRWP) for natural stream restoration of an unnamed tributary of Flynn Creek within Rocky Branch Park.**

RECOMMENDATION:

Staff recommends approval of a landowner agreement with the Illinois River Watershed Partnership (IRWP) for natural stream restoration of an unnamed tributary of Flynn Creek within Rocky Branch Park.

BACKGROUND:

For several years staff have received concerns from landowners around the tributary that runs through Rocky Branch Park. Specifically, these concerns are related to the loss of fencing and property damage associated with continued stream bank erosion. The bank erosion is also contributing to sediment loads that ultimately drain to the Illinois River and on to the Arkansas River.

DISCUSSION:

As a response to these concerns of bank erosion and sediment/pollutant loading, staff completed a Capital Improvement Project budgetary request for 2024 that was ultimately approved by Council. This agreement is an extension of that approved funding to begin the design and construction process for a natural stream restoration. As the stream is located within the Illinois River Watershed, IRWP also has an interest in developing a solution to reduce sediment and pollutant loading within the Illinois River basin. The City has partnered with IRWP for years to help educate the public about water quality efforts and implement water quality projects. To further that partnership, attached is a landowner agreement between IRWP and the City of Fayetteville. It is proposed that IRWP will take the lead on the project and have already engaged Natural State Streams to begin the design. The proposed agreement would allow the City of Fayetteville to reimburse IRWP for the City's portion of the project and to implement the project on City property.

BUDGET/STAFF IMPACT:

Sales tax capital improvement project funds were allocated within the 2024 budget for the project totaling \$275,000. These funds will be combined with \$149,938 provided by IRWP to complete the project.

ATTACHMENTS: SRF (#3), Rocky Branch Agreement (#4)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-146

Approval of a landowner agreement with the Illinois River Watershed Partnership (IRWP) for natural stream restoration of an unnamed tributary of Flynn Creek within Rocky Branch Park.

A RESOLUTION TO APPROVE A LANDOWNER AGREEMENT WITH THE ILLINOIS RIVER WATERSHED PARTNERSHIP FOR NATURAL STREAM RESTORATION OF AN UNNAMED TRIBUTARY OF FLYNN CREEK WITHIN ROCKY BRANCH PARK

WHEREAS, staff have received concerns from landowners around the tributary that runs through Rocky Branch Park for several years related to the loss of fencing and property damage associated with continued stream bank erosion; and

WHEREAS, the bank erosion is also contributing to sediment loads that ultimately drain to the Illinois River and on to the Arkansas River; and

WHEREAS, as a response to those concerns, staff completed a Capital Improvement Project budgetary request for 2024 that was approved by City Council; and

WHEREAS, this agreement is an extension of that approved funding to begin the design and construction process for a natural stream restoration.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a landowner agreement with the Illinois River Watershed Partnership for natural stream restoration of an unnamed tributary of Flynn Creek within Rocky Branch Park.

City of Fayetteville Staff Review Form

2024-146

Item ID

6/18/2024

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

Chris Brown

5/24/2024

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a landowner agreement with the Illinois River Watershed Partnership (IRWP) for natural stream restoration of an unnamed tributary of Flynn Creek within Rocky Branch Park.

Budget Impact:

4470.621.8810-5817.00

Sales Tax Capital Improvement

Account Number

Fund

02108.2401

Brookbury Stream Restoration

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 275,000.00

Expenses (Actual+Encum)

\$ -

Available Budget

\$ 275,000.00

Does item have a direct cost? Yes

Item Cost

\$ 275,000.00

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

RIPARIAN RESTORATION PROGRAM LANDOWNER AGREEMENT



The goal of this project is to improve water quality in the Clear Creek 10-Digit HUC, a priority sub-watershed located in Washington County, AR through the implementation of conservation and restoration practices along 700 linear feet of streambank along Rocky Branch Creek. Conservation practices include:

1. **Streambank and Shoreline Protection**-There are approximately 700 linear feet of streambank along Rocky Branch Creek that are experiencing moderate to severe streambank erosion and geomorphic instability. This section of stream is currently threatening public and private infrastructure, as well as contributing significant amounts of sediment to the watershed. A natural channel design approach will be taken to stabilize the areas of instability, restore appropriate channel dimensions, and promote aquatic habitat in Rocky Branch Park.
2. **Riparian Forest Buffer**- A revegetation plan will be developed by Natural State Streams to restore the acreage within the project area from non-native invasive species back to native vegetation that would naturally thrive in Rocky Branch Park. A riparian buffer is a multi-purpose practice that is designed to help stabilize bank erosion, filter out nutrients, sediments, and other pathogens, create shade, lower water temperatures, create pollinator habitat, and improve habitat for aquatic and terrestrial wildlife.
3. **Invasive Species Management**- There are multiple invasive species throughout Rocky Branch Park such as Chinese Privet, Bush Honeysuckle, Wintercreeper Euonymus, and others that need to be controlled. Most of these species are tolerant of shade and disease, and are adaptable, aggressive spreaders that form dense thickets and can often create monoculture. These invasive species are detrimental to our native species, often providing little food, cover, or habitat for wildlife. Treatment could include mechanical and/or chemical applications.

CONTRACTING PARTIES

This agreement is made by and between:

ILLINOIS RIVER WATERSHED PARTNERSHIP, whose address is 221 S. Main Street, Cave Springs, AR 72718, hereafter referred to as IRWP,

LANDOWNER, whose name is City of Fayetteville, AR whose mailing address is 113 West Mountain Street, Fayetteville, AR 72701.

This Agreement is effective beginning on the date it is signed by all parties and ends October 31, 2024.

All work will be performed on parcel(s) **765-19938-010** belonging to the City of Fayetteville, AR, described in maps in Exhibit A.

LANDOWNER

LANDOWNER grants IRWP and its contractors authority to complete the project described in Exhibit A. Any donation of supplies, equipment, or direct payment from IRWP to LANDOWNER for carrying out the projects or practices is included in Exhibit A. The activities conducted pursuant to this Agreement are not to replace, supplement or otherwise contribute to any mitigation or compensation that may be required of the LANDOWNER, IRWP, or other parties, as a result of any mandated requirements.

LANDOWNER guarantees ownership of the land described in Exhibit A and warrants that there are no outstanding rights that interfere with this Landowner Agreement.

LANDOWNER agrees to allow access (with advance notice) to IRWP and other contractors or cooperating partners to implement the project described in Exhibit A, and to monitor project success.

LANDOWNER retains all rights to control access and retains all responsibility for taxes, assessments, and damage claims.

LANDOWNER shall be under no obligation to IRWP after the term of the Agreement has expired on October 31, 2024 except as described elsewhere in this agreement.

LANDOWNER agrees to maintain, and not destroy the project area for the total lifespan of the project (15 years), after IRWP's initial establishment period has ended as described in Exhibit A.

LANDOWNER will NOT be responsible for replacing conservation practices that are damaged or destroyed by severe acts of nature.

LANDOWNER agrees to provide 65% match **(\$275,000)** of the total project cost of (\$424,938) via financial contribution. The City of Fayetteville's financial obligation of approximately 65% of all eligible project costs, shall not exceed **\$275,000**. IRWP will submit an invoice to the City of Fayetteville for up to, but not greater than **\$275,000** upon completion of the project.

IRWP

IRWP will work with LANDOWNER, contractors, and Cooperating Partners throughout the entire Agreement term to support actions needed to ensure that the project is designed and constructed per the Agreement.

IRWP, its agents, or assignees will provide advanced notice prior to accessing LANDOWNER'S property to implement the project described in the work plan, and to monitor project success.

IRWP assumes no liability for damage or injury on the above acreage. IRWP does not assume jurisdiction over the premises by this Agreement.

IRWP agrees to provide project management as well as 35% of all project costs, or up to **\$149,938** of the total project costs.

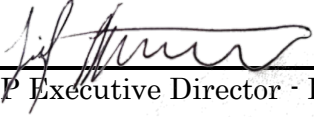
MODIFICATIONS TO AGREEMENT

This Agreement may be modified at any time by mutual written consent of the parties. It may be terminated by either party upon 30 days advance written notice to the other party. However, if LANDOWNER terminates the Agreement before its expiration, or if LANDOWNER should materially default on these commitments, then LANDOWNER agrees to reimburse IRWP prior to final termination for the prorated costs of all riparian restoration activities placed on the land through this Agreement.

Signatures:

LANDOWNER - City of Fayetteville, AR

Date



5/23/24

IRWP Executive Director - Leif Kindberg

Date



5/24/24

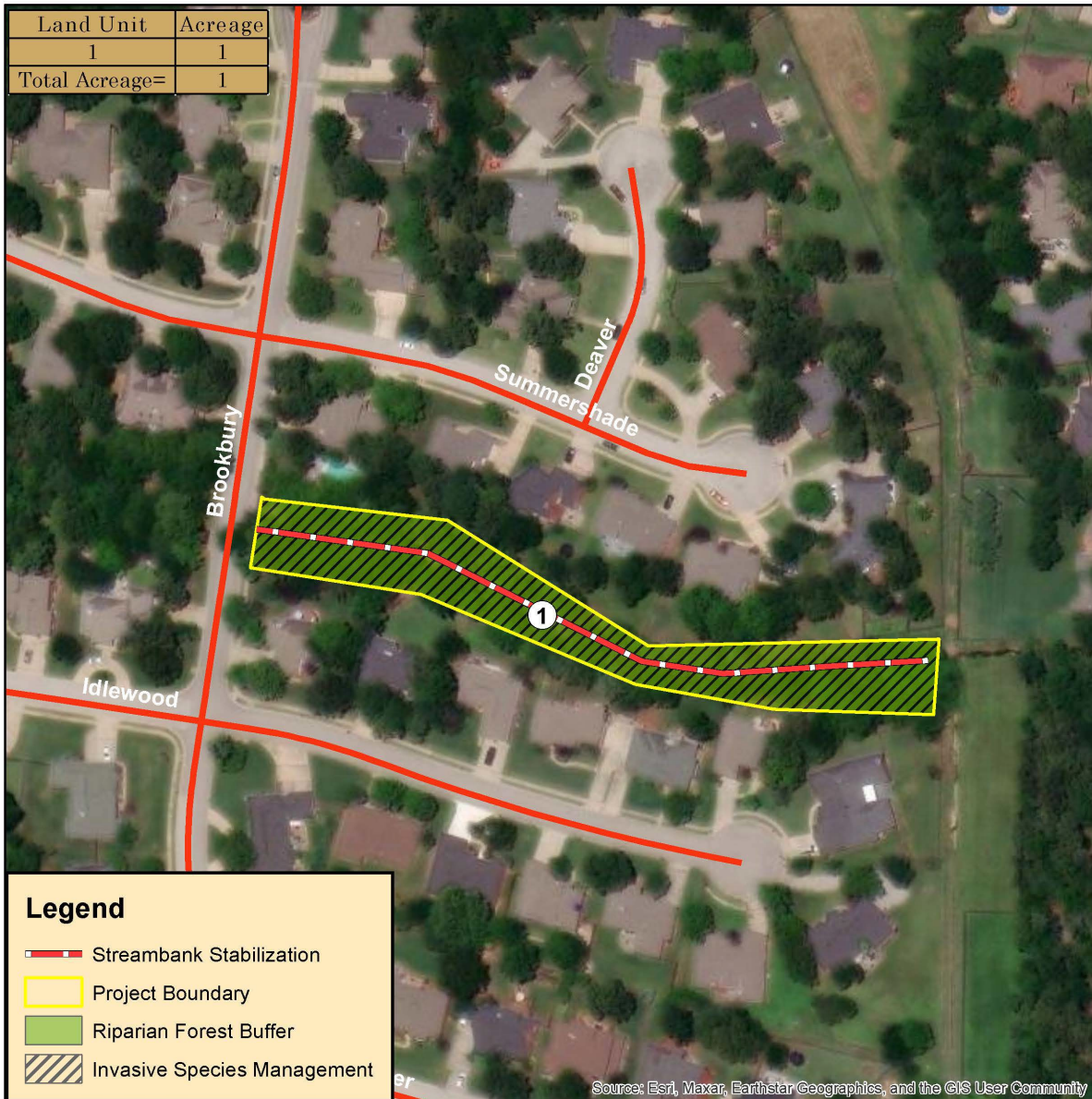
IRWP Board of Directors - Steven Beam

Date

Exhibit A

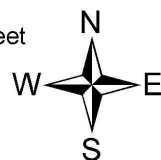
Rocky Branch Park
Fayetteville, AR
Washington County
36°06'06.34"N, 94°06'50.50"W

10 Digit HUC: 1111010302
Clear Creek-Illinois River
12 Digit HUC: 111101030202
Mud Creek-Clear Creek



0 125 250 500 750 Feet

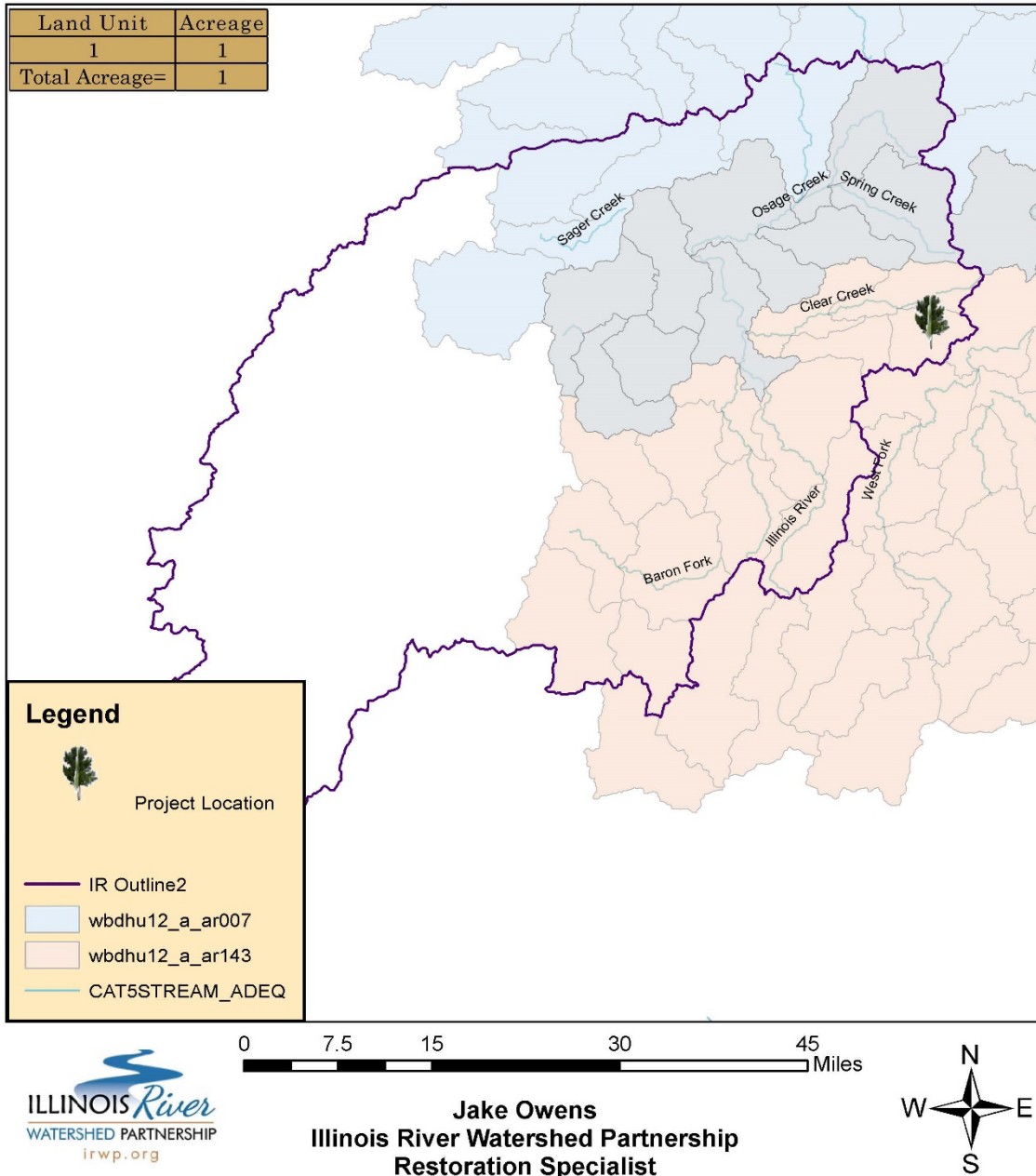
Jake Owens
Illinois River Watershed Partnership
Restoration Specialist



Project Location Map

Rocky Branch Park
Fayetteville, AR
Washington County
36°06'06.34"N, 94°06'50.50"W

10 Digit HUC: 1111010302
Clear Creek-Illinois River
12 Digit HUC: 111101030202
Mud Creek-Clear Creek



Narrative of Conservation Activities

May-July 2024

- Natural State Streams will finalize the survey and design process, providing 30% and 90% designs to IRWP and City of Fayetteville upon completion.
- Natural State Streams will apply for any necessary permitting required in order to complete in-stream construction at Rocky Branch Park.

August-October 2024

- Natural State Streams will implement natural channel design streambank stabilization, invasive species management, and revegetation of native species in the project area.

Payment and Invoicing

IRWP Program Manager will track all project-related expenses and in-kind contributions. IRWP will invoice City of Fayetteville for their match portion, not to exceed \$275,000, upon completion of restoration practices in October of 2024.

Proposed Project Budget

Project Element	Proposed Cost/Bids
Survey, Planning, 100% Design, Permitting	\$42,250
Mobilization	\$10,000
Completed Construction and Revegetation	\$372,688
Total Project Cost	\$424,938
City of Fayetteville 65% Match	\$275,000
IRWP 35% Match	\$149,938



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Donna Wonsower, Planner

SUBJECT: **RZN-2024-0018: Rezoning (SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE./SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO, 522): Submitted by SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO for property located at SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 2.9 acres. The request is to rezone the property to MSC, MAIN STREET CENTER subject to a bill of assurance.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B', and with the associated Bill of Assurance as shown in Exhibit 'C'.

BACKGROUND:

The subject area is in central Fayetteville, approximately 300 feet east of Fayetteville Public Schools' Harmon Field and 900 feet northeast of Fayetteville High School. Multiple parcels are included in the area, totaling approximately 2.9 acres and bound by W. Treadwell St. to the north, S. Hill Ave. to the east, W. Putnam St. to the south, and S. Duncan Ave. to the west. Zoning on the property is currently RMF-40, Residential Multifamily, 40 Units per Acre, with development that ranges from apartments and single-family dwellings, to a largely undeveloped parcel with off-site parking. The existing structures were built between 1931 and 1964. The property does not fall within any overlay districts or Master Plan Areas.

Request: The request is to rezone the property from RMF-40, Residential Multifamily, 40 Units per Acre to MSC, Main Street Center.

Public Comment: Staff has received multiple public comments. Two members of the public requested additional information, one of whom expressed general concerns about city-wide parking requirements and ensuring that any future development here is adequately parked. One member of the public sent two separate emails expressing their opposition, citing the potential destruction of affordable rental housing units with existing, long-term residents who will likely be displaced out of the city, the need for protections for existing residents and dwellings, increased housing costs for any new luxury units, out-of-state developers, potential development adjacent to the property by additional developers, the age of the existing apartments on the site, the need for the university to manage its student population and associated housing needs, and lack of mailed public notification documents to current residents of the affected property. The second email also included

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

questions related to some of the stated goals of the 2040 Plan.

Land Use Compatibility: On the balance of considerations, staff finds the request to be compatible with the surrounding context. The property is primarily surrounded by large-size apartments with single-family dwellings located to the west adjacent to the Fayetteville High School campus. Additionally, the parcels within the subject area are currently developed with primarily multifamily dwellings. Based on a review of addresses, there are a total of 53 residential dwelling units currently within the subject area. The existing RMF-40 district would permit a maximum of 116 dwelling units on the 2.9-acre subject area with a maximum building height of five stories, while the proposed MSC district has no density limitations and a maximum building height of seven stories when located greater than 15 feet from the right-of-way. Staff finds that the existing buildings are between 60–93 years old and that no building permits aside from two HVAC renovations were found for the subject area that indicate renovations since completion. No buildings within the subject area are listed on either the Federal or Arkansas Register of Historic Places. An analysis of each parcel's current development is included in a staff exhibit.

The subject area is bordered by properties zoned DG, Downtown General to the north and east, which permits a mix of commercial and residential uses and structures up to five stories. The Atmosphere multi-family structure to the north is constructed to five stories. Eco Modern Flats to the east is constructed with three stories, though staff notes that the ground floor is located below street grade. Additional apartments to the south were constructed to a two story height. Staff finds that the greater height permitted by MSC is not likely to negatively affect the surroundings given the abutting multi-story apartments and the MSC district's limit of building height to 5 stories when within 0'-15' of the property line and 7 stories permitted further from the front property line. Further, a large block of MSC is located approximately 500 feet to the east.

While rezoning from RMF-40 to MSC will remove the current density limitation of 40 units per acre, staff finds that the request is not likely to create development that is incompatible with the surroundings given that the other city requirements such as parking lot design standards and ratios, tree preservation, and drainage. A bill of assurance has been provided with the rezone to limit potentially incompatible uses, including Use Unit 17: Transportation Trades and Services, Use Unit 34: Liquor Stores, and Use Unit 45: Small Scale Production. Staff finds that rezoning to a mixed-use district would create the possibility of compatible development and that additional commercial uses could also serve the high density of existing, nearby residents as well as students and faculty of the adjacent high school.

Land Use Plan Analysis: On the balance of considerations, staff finds that the request is consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. Given the walkable location of the request and potential for mixed-use development, staff finds the request to be consistent with the following City Plan 2040 Goals: Goal 1: We will make appropriate infill and revitalization our highest priority; Goal 2: We will discourage suburban sprawl; Goal 3: We will make compact, complete, and connected development the standard; Goal 4: We will grow a livable transportation network; and mixed consistency for Goal 6: We will create opportunities for affordable housing.

The Fayetteville Housing Assessment completed by City staff in October 2023 discusses the preservation of affordable housing and notes that "new supply should be carefully balanced with preserving existing affordable housing – housing that can be in prime areas for redevelopment due to growing land values compared to the declining value of aging structures." While staff acknowledges that any redevelopment of the subject area and associated demolitions would remove naturally occurring affordable housing units within the subject area, staff also acknowledges that the property owners are legally able to redevelop the subject area with new multifamily dwellings by right under the existing RMF-40 zoning district and that any redevelopment including uses permitted by right is not subject to discretionary approval by either the Planning Commission or City Council provided that all applicable city ordinances and development standards are met.

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Fayetteville, AR 72701

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The area is designated as a City Neighborhood Area, which envisions a mixture of residential nonresidential uses of varying size, variety, and intensity. As noted, the subject area is approximately 900 feet northeast of the Fayetteville High School campus and approximately ¼ mile southeast of the University of Arkansas campus, which is designated as a special district by the 2040 growth map and described as “portions of the city that are historically or currently intended for more intensive commerce.” The closest Tier Centers are located just over half a mile east at the historic downtown square (Tier 1) and approximately half a mile southeast at the intersection of W. Martin Luther King Jr. Blvd. and S. Nelson Hackett Blvd (Tier 3).

The infill score for this parcel is high, indicating the property could likely support a wide range of uses and additional density, particularly given the proximity of both the Fayetteville High School and the University of Arkansas campus. Staff also finds that allowing additional residential in proximity to major activity centers and close to both ORT and Razorback transit stops allows potential residents to use alternative transportation, helping to mitigate or reduce potential traffic impacts. Given that denying the rezoning request would not necessarily prevent redevelopment of the property by the new owners, staff finds that approval of the rezoning to MSC may lead to results that are more compatible with city goals than could be met under the existing zoning by allowing a greater number of additional residential units to be constructed while providing potential for a mix of commercial and residential uses.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040’s Infill Matrix indicates a ranging score of 12 for this site. The following elements of the matrix contribute to the score:

- 4 Minute Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (8” Sewer Mains: W. Treadwell St., W. Putman St., and S. Duncan Ave.)
- Near Water Main (8” Water Main, W. Treadwell St. | 6” Water Main, W. Putman St and S. Duncan Ave. | 4” Water Main, S. Hill Ave.)
- Near Grocery Store (Walmart Neighborhood Market)
- Near Public School (Fayetteville High School)
- Near U of A Campus
- Near City Park (Lower Ramble)
- Near Paved Trail (Oakridge Trail, Razorback Greenway)
- Near ORT Bus Stop (Hillcrest Towers)
- Near Razorback Transit Bus Stop (S. Hill Ave on subject property)
- Appropriate Future Land Use
- Sufficient Intersection Density

DISCUSSION:

At the April 22, 2024, Planning Commission meeting, a vote of 8-1-0 forwarded the revised request of MSC, Main Street Center to City Council with a recommendation of approval. Commissioner Payne made the motion and Commissioner Cabe seconded. Commissioner Werner voted against the proposed rezoning, citing the removal of affordable housing units and potential displacement of residents. Commissioners voting in favor of the request cited the ability of the current property owners to redevelop the parcels by right under the existing RMF-40 zoning, proximity to campus, existing transit routes located on the property, and the provided Bill of Assurance. Several commissioners questioned what actions the city is legally able to take regarding protection for existing affordable housing units. Senior Assistant City Attorney Blake Pennington affirmed that cities in Arkansas are preempted by the state from passing ordinances regarding rent control or other tenant protections that exceed state standards. There was also discussion relating to potential improvements associated with the project, which staff confirmed would be determined with future development plans.

Five members of the public spoke at the meeting. One individual spoke in favor of the request, citing

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

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compatibility with the adjacent neighborhoods. One individual questioned potential traffic impacts and improvements, whether the development would be fully student housing and if the existing residents could be provided housing within the new units. Staff affirmed that potential traffic impacts would be reviewed during development plans and that the city cannot require affordable housing units or provision of residential units for the existing residents. Another individual asked if a lower intensity district would still get the developer what they need. The applicant team noted the presence of a large transmission line on the south side of the block and the need to fully park the development on site. Two additional members of the public expressed opposition to the request, citing demolition of existing affordable units and dislocation of existing residents.

BUDGET/STAFF IMPACT:

NA

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Exhibit C (#6), Planning Commission Staff Report (#7)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-57

RZN-2024-0018: Rezoning (SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE./SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO, 522): Submitted by SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO for property located at SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 2.9 acres. The request is to rezone the property to MSC, MAIN STREET CENTER subject to a bill of assurance.

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-18 FOR APPROXIMATELY 2.9 ACRES LOCATED SOUTHWEST OF WEST TREADWELL STREET AND SOUTH HILL AVENUE IN WARD 2 FROM RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE TO MSC, MAIN STREET CENTER, SUBJECT TO A BILL OF ASSURANCE

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from RMF-40, Residential Multifamily, 40 Units per Acre to MSC, Main Street Center, subject to a bill of assurance.

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.

City of Fayetteville Staff Review Form

2024-57

Item ID

5/21/2024

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

Jonathan Curth

5/3/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0018: Rezoning (SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE./SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO, 522): Submitted by SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO for property located at SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 2.9 acres. The request is to rezone the property to MSC, MAIN STREET CENTER.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

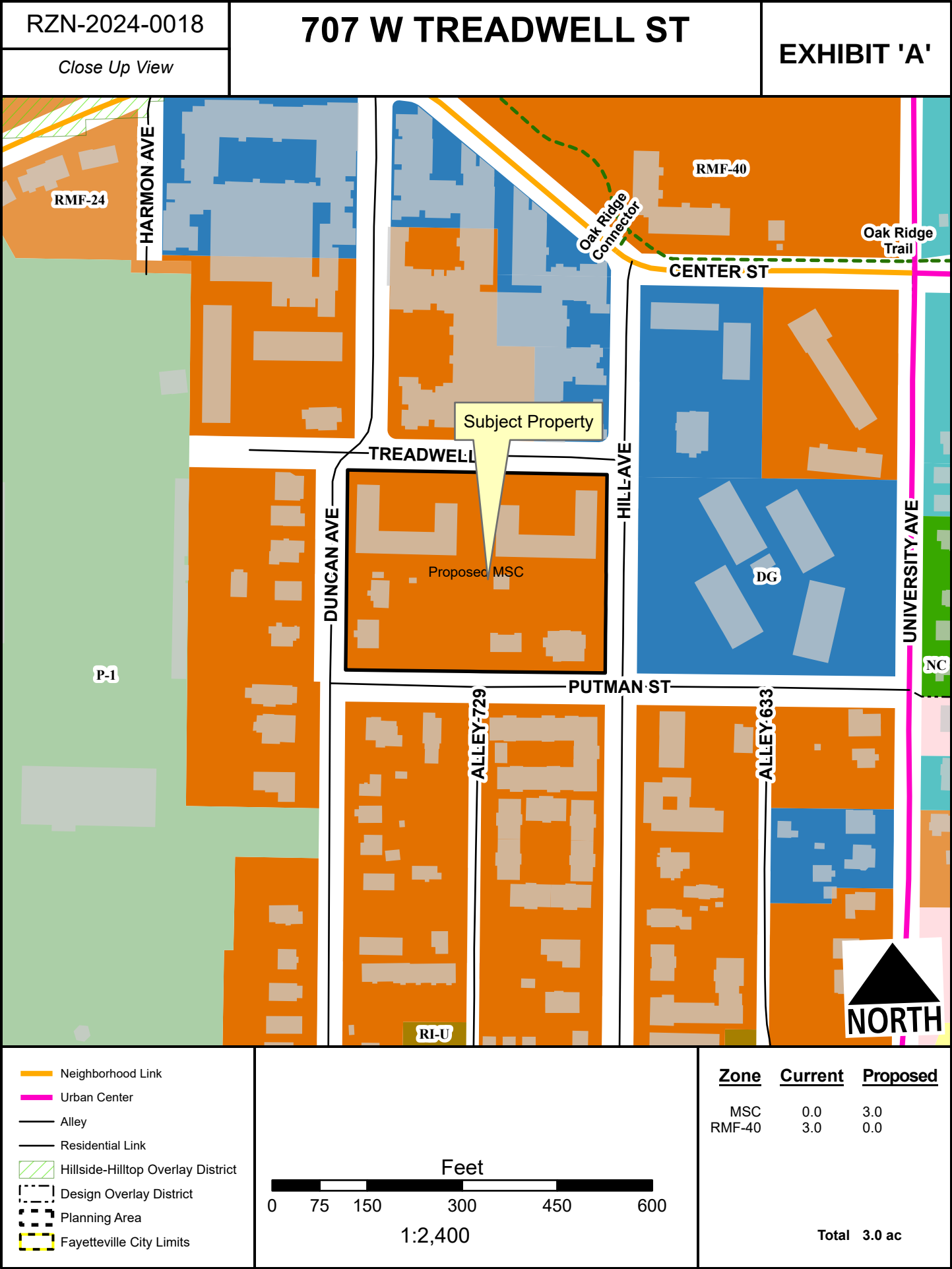
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF WASHINGTON, STATE OF ARKANSAS, AND IS DESCRIBED AS FOLLOWS:

PARCEL 765-04804-000:

LOTS 1, 2, 3, 10, 11, 12 AND THE NORTH FIVE (5) FEET OF LOT 4, ALL IN BLOCK 5 OF I. W. DUNCAN'S ADDITION TO THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

PARCEL 765-04805-000:

FORTY-FIVE (45) FEET OF EQUAL AND UNIFORM WIDTH OFF THE SOUTH SIDE OF LOT 4 AND TEN (10) FEET OF EQUAL AND UNIFORM WIDTH OFF THE NORTH SIDE OF LOT 5 IN BLOCK 5 OF I. W. DUNCAN'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER PLAT OF SAID ADDITION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS.

PARCEL 765-04806-000:

THE SOUTH FORTY (40) FEET OF LOT 5 AND ALL OF LOT 6 IN BLOCK 5 OF I. W. DUNCAN'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER PLAT OF SAID ADDITION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS.

PARCEL 765-04807-000:

ONE HUNDRED TWENTY-SEVEN (127) FEET OFF THE EAST END OF LOTS 7, 8, 9 IN BLOCK 5 OF DUNCAN'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS DESIGNATED UPON THE RECORDED PLAT OF SAID ADDITION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS.

PARCEL 765-04808-000:

THE WEST 81.48 FEET OF LOT 7, AND THE WEST 81.48 FEET OF THE SOUTH 25 FEET OF LOT 8, IN BLOCK 5, DUNCAN'S ADDITION, TO THE CITY OF FAYETTEVILLE, AS SHOWN ON PLAT OF RECORD IN PLAT BOOK 4 AT PAGE 192, PLAT RECORDS OF WASHINGTON COUNTY, ARKANSAS. VD.

PARCEL 765-04809-000:

THE WEST 81.48 FEET OF LOT NINE (9) AND THE WEST 81.48 FEET OF THE NORTH 25 FEET OF LOT EIGHT (8) IN BLOCK FIVE (5) OF DUNCAN'S ADDITION TO THE CITY OF FAYETTEVILLE, ACCORDING TO THE RECORDED PLAT OF SAID ADDITION ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS.

NOTE: ANY MENTION OF PARCEL NOS. ARE FOR INFORMATIONAL PURPOSES ONLY.

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

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

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

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

1. The following uses shall not be permitted:

Unit 17, Transportation trades and services;

Unit 34, Liquor stores; and

Unit 45, Small scale production

2. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

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

[SIGNATURES TO APPEAR ON FOLLOWING PAGE]

☐
OWNER:

BRAWNER REAL ESTATE, LLC

Keri Brawner
By: K.M. BRAWNER
Title: _____
Date: 4-23-2024
Address: 1687 N. Broadway Dr
Fayetteville, AR, 72703

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

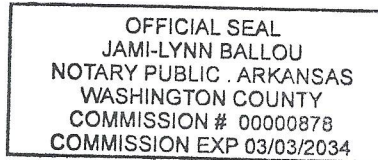
RZN-2024-0018
EXHIBIT C

And now on this the 24 day of April, 2024, appeared before me,
Jami-Lynn Ballou, a Notary Public, and after being placed upon his/her oath swore
or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her
name above.

Jami-Lynn Ballou
NOTARY PUBLIC

My Commission Expires:

3.3.34



OWNER:

KERR INVESTMENT COMPANY, LLC

Katherine Kerr Fawcett
By: Katherine Kerr Fawcett

Title: President

Date: 4-25-24

Address: mailing: PO Box 1083, Russellville AR 72811

Registered Agent: URS Agents INC. 9666 Olive Blvd. # 690, St. Louis MO 63132

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 25th day of April, 2024, appeared before me,
Brandi Everette, a Notary Public, and after being placed upon his/her oath
swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and
signed his/her name above.

Brandi Everette
NOTARY PUBLIC

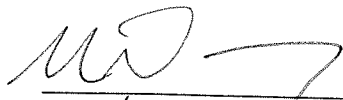
My Commission Expires:

10/25/2027



OWNER:

98 DUNCAN, LLC



By: Marcus Neussary

Title: President

Date: 4/26/2024

Address: 8505 W Pleasant Grove Rd
Bentonville, Ark 72713

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 26 day of April, 2024, appeared before me, Lizbeth Chavez, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.



NOTARY PUBLIC

My Commission Expires:

April 3, 2032





TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: April 22, 2024 (UPDATED WITH MEETING RESULTS)

SUBJECT: **RZN-2024-0018: Rezoning (SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE./SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO, 522):** Submitted by SUBTEXT ACQUISITIONS, LLC. AND MODUS STUDIO for property located at SOUTHWEST OF W. TREADWELL ST. AND S. HILL AVE. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 2.9 acres. The request is to rezone the property to MSC, MAIN STREET CENTER.

RECOMMENDATION:

Staff recommends **RZN-2024-0018** be forwarded to the City Council with a recommendation for approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0018** to the City Council with a recommendation of approval."*

BACKGROUND:

The subject area is in central Fayetteville approximately 300 feet east of Harmon Field and 900 feet northeast of the Fayetteville High Schol. The subject area contains multiple parcels and is bound by W. Treadwell St. to the north, S. Hill Ave. to the west, W. Putnam St. to the south, and S. Duncan Ave. to the west. The subject area contains roughly 2.9 acres and is currently zoned RMF-40, Residential Multifamily, 40 Units per Acre. The property is currently developed with a range of uses, including apartments, single-family dwellings, and a largely undeveloped parcel with off-site parking. The existing structures were built between 1931 -1964. The property does not fall within any overlay districts or Master Plan areas. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Residential Multifamily (Apartments)	RMF-40, Residential Multifamily, 40 Units per Acre DG, Downtown General
South	Residential Multifamily (Apartments) Single-Family Residential	RMF-40, Residential Multifamily, 40 Units per Acre
East	Residential Multifamily (Apartments)	DG, Downtown General
West	Single-Family Residential	RMF-40, Residential Multifamily, 40 Units per Acre

Request: The request is to rezone the property from RMF-40, Residential Multifamily, 40 Units per Acre to MSC, Main Street Center.

Public Comment: Staff has received multiple public comments. One member of the public requested additional information regarding the project and associated public hearing. One member of the public sent two separate emails expressing their opposition, citing potential destruction of affordable rental housing units with existing, long-term residents who will likely be displaced out of the city, the need for protections for existing residents and dwellings, increased housing costs for any new luxury units, out-of-state developers, potential development adjacent to the property by additional developers, the age of the existing apartments on the site, the need for the university to manage its student population and associated housing needs, and lack of mailed public notification documents to current residents of the affected property. The second email also included questions related to some of the stated goals of the 2040 Plan.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

Streets: The subject area has frontage along four streets. W. Treadwell St. is a partially improved Residential Link with asphalt paving, curb & gutter, sidewalk along the north side, and no curb and gutter on the south side. S. Hill Ave. is a partially improved Residential Link with asphalt paving, curb & gutter, and sidewalks. W. Putman St. is a partially improved Residential Link with asphalt paving and open ditches. S. Duncan Ave. is a partially improved Residential Link with asphalt paving, partial curb and gutter, and sidewalk along the east side. Any street or drainage improvements required in these areas would be determined at the time of development proposal.

Water: Public water is available to the subject area. An existing 8" water main is present on the north side of W. Treadwell St. Existing 6" water mains are available on the north side of W. Putman St. and the West side of South Duncan Avenue. An existing 4" water main is present on the east side of S. Hill Ave.

Sewer: Sanitary sewer is available to the subject area. Existing 8" sewer mains are present on the south side of W. Treadwell St., the south side of W. Putman St., and the west side of S. Duncan Ave.

Fire: Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development. Station 1, located at 303 W. Center St., protects this site. The property is located approximately 0.5 miles from the fire station with an anticipated drive time of approximately 2 minutes using existing streets. The anticipated response time would be approximately 4.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the City Limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck.

Police: The Police Department expressed no concerns with this request.

Drainage: No portion of the property is within a FEMA floodplain, the Hillside-Hilltop Overlay District or includes a protected stream. Additionally, no hydric soils are present.

Tree Preservation:

The proposed zoning district of MSC, Main Street Center requires **10% minimum canopy preservation**. The current zoning district of RMF-40, Residential

Multifamily, 40 Units per Acre requires **20% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **City Neighborhood**.

City Neighborhoods are more densely developed than residential neighborhood areas and provide a mix of non-residential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family. Non-residential and commercial uses are primarily located at street intersections and along major corridors. Ideally, commercial uses would have a residential component and vary in size, variety and intensity. The street network should have a high number of intersections creating a system of small blocks with a high level of connectivity between neighborhoods. Building setbacks and landscaping are urban in form with street trees typically being located within the sidewalk zone.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a ranging score of **12** for this site, with a weighted score of **15.5**. The following elements of the matrix contribute to the score:

- 4 Minute Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (8" Sewer Mains: W. Treadwell St., W. Putman St., and S. Duncan Ave.)
- Near Water Main (8" Water Main, W. Treadwell St. | 6" Water Main, W. Putman St and S. Duncan Ave. | 4" Water Main, S. Hill Ave.)
- Near Grocery Store (Walmart Neighborhood Market)
- Near Public School (Fayetteville High School)
- Near U of A Campus
- Near City Park (Lower Ramble)
- Near Paved Trail (Oakridge Trail, Razorback Greenway)
- Near ORT Bus Stop (Hillcrest Towers)
- Near Razorback Transit Bus Stop (S. Hill Ave on subject property)
- Appropriate Future Land Use
- Sufficient Intersection Density

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: Land Use Compatibility: On the balance of considerations, staff finds the request to be compatible with the surrounding context. The property is primarily surrounded by large-size apartments with single-family dwellings located to the west adjacent to the Fayetteville High School campus. Additionally, the parcels within the subject area are currently developed with primarily multifamily dwellings. Based on a review of addresses, there are a total of 53 residential dwelling units currently within the subject area. The existing RMF-40 district would permit a maximum of 116 dwelling units on the 2.9-acre subject area with a maximum building height of 5 stories, while the proposed DG district has no density limitations with a maximum building height of 7 stories when located greater than 15 feet from the right-of-way. Staff finds that the existing buildings are between 60-93 years old and that no building permits aside from two HVAC renovations were found for the subject area that indicate renovations since

completion. No buildings within the subject area are listed in either the Federal or Arkansas Register of Historic Places. An analysis of each parcel's current development is included in a staff exhibit.

The subject area is partially bound by DG, Downtown General to both the north and east, which permits a mix of commercial and residential uses and structures up to 5 stories. The Atmosphere to the north is constructed with 5 stories. Eco Modern Flats to the east is constructed with three stories, though staff notes that the ground floor is located below street grade. Additional apartments to the south were constructed at two stories. Staff finds that the greater height permitted by MSC is not likely to negatively affect the surroundings given these abutting multi-story apartments and the district's limit of building height to 5 stories when within 0'-15' of the property line with 7 stories only permitted further from the ROW. Further, a large block of MSC is located approximately 500 feet to the east.

While rezoning from RMF-40 to MSC will remove the current density limitation of 40 units per acre, staff finds that the request is not likely to create development that is incompatible with the surroundings given that the other city requirements such as parking lot design standards and ratios, tree preservation, and drainage. A bill of assurances has been provided with the rezone to limit potentially incompatible uses, including Use Unit 17: Transportation Trades and Services, Use Unit 34: Liquor Stores, and Use Unit 45: Small Scale Production. Staff finds that rezoning to a mixed-use district would create the possibility of compatible development and that additional commercial uses could also serve the high density of existing residents within the immediate proximity as well as students and faculty of the adjacent high school.

Land Use Plan Analysis: On the balance of considerations, staff finds that the request is consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. Given the walkable location of the request and potential for mixed-use development, staff finds the request to be consistent with the following City Plan 2040 Goals: Goal 1: We will make appropriate infill and revitalization our highest priority; Goal 2: We will discourage suburban sprawl; Goal 3: We will make compact, complete, and connected development the standard; Goal 4: We will grow a livable transportation network; and Goal 6: We will create opportunities for affordable housing.

The Fayetteville Housing Assessment completed by City staff in October 2023 discusses the preservation of affordable housing and notes that "new supply should be carefully balanced with preserving existing affordable housing – housing that can be in prime areas for redevelopment due to growing land values compared to the declining value of aging structures." While staff acknowledges that any redevelopment of the subject area and associated demolitions would remove naturally occurring affordable housing units within the subject area, staff also acknowledges that the property owners are legally able to redevelop the subject area with new multifamily dwellings by right under the existing Residential Multifamily, 40 Units per Acre (RMF-40) zoning district and that any redevelopment which

includes only uses permitted by right is not subject to discretionary approval by either the Planning Commission or City Council provided that all applicable city ordinances and development standards are met.

The area is designated as a City Neighborhood Area, which recommends that commercial uses would have a residential component and vary in size, variety and intensity. The subject area is approximately 500 feet east of the Fayetteville High School campus and approximately ¼ mile east of the University of Arkansas campus, which is designated as a special district by the 2040 growth map and described as “portions of the city that are historically or currently intended for more intensive commerce.” The closest Tier Centers are located just over half a mile east at the historic downtown square (Tier 1) and approximately half a mile southeast at the intersection of W. Martin Luther King Jr. Blvd. and S. Nelson Hackett Blvd (Tier 3).

The infill score for this parcel is high, with a weighted score of 15.5, indicating the property could likely support a wide range of uses and additional density, particularly given the close proximity of both the Fayetteville High School and University of Arkansas campus. Staff also finds that allowing additional residential in close proximity to major traffic drivers and within close proximity to both ORT and Razorback transit stops could allow for residents to use alternative transportation options such as walking, biking, or utilizing transit to these institutions, helping to mitigate or reduce potential traffic impacts. Given that denying the rezoning request would not necessarily prevent redevelopment of the property by the new owners, staff finds that approval of the rezoning to MSC may lead to results that are more compatible with city goals than could be met under the existing zoning by allowing a greater number of additional residential units to be constructed while providing potential for a mix of commercial and residential uses.

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

Finding: On the balance, staff finds the proposed zoning is justified and necessary at this time. While any redevelopment of these parcels could negatively impact existing affordable housing stock, staff notes that the property owners could legally redevelop the parcels with new multifamily dwellings by right under the existing zoning district. The proposed zoning of MSC could permit a mixed-use development with higher density allowances in an area with a weighted infill score of 15.5 where only residential uses are currently permitted by right under RMF-40.

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

Finding: A rezoning from RMF-40 to MSC has the potential to increase traffic at this location when considering that MSC would allow for more dense development than the existing zoning which has a stated density limitation. The lots under consideration have direct access to public streets and staff finds that given the property’s location on a transit route close to the university and the Fayetteville High School campus, many trips have the

capacity to be completed through alternative transportation such as walking, biking, or transit. Any necessary street improvements and potential traffic impacts would be determined 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: The proposed rezoning has the potential to alter the population density since it would allow for increased residential development. However, the property is in close proximity to public streets and existing water and sewer mains. Any necessary upgrades or improvements to existing infrastructure would be determined at the time of development. Fayetteville Public Schools did not comment on this request.

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

RECOMMENDATION: Planning staff recommends forwarding RZN-2024-0018 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION: Required YES

Date: April 22, 2024

☐ Tabled

☒ Forwarded

☐ Denied

Motion: PAYNE

FORWARD TO CITY COUNCIL WITH A
RECOMMENDATION OF APPROVAL

Second: CABE

Vote: 8-1-0 (BRINK OPPOSED)

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.17 District RMF-40, Residential Multi-Family - Forty (40) Units Per Acre
 - §161.27 Main Street/Center
- Applicant Request Letter
- Proposed Bill of Assurance
- Staff Exhibit
 - Current Development
 - Fayetteville Housing Assessment Excerpts
 - Active Transportation Plan Excerpts and Map
 - Proximity to Tier Center Exhibit
 - City Plan 2040 Excerpts
 - Climate Action Plan Presentation Excerpts
 - Traffic Accidents Exhibits
- Public Comment
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

161.17 District RMF-40, Residential Multi-Family - Forty (40) Units Per Acre

(A) *Purpose.* The RMF-40 Multi-family Residential District is designated to protect existing high density multi-family development and to encourage additional development of this type where it is desirable.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 26	Multi-family dwellings
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 46	Short-term rentals

(2) *Conditional Uses.*

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

(C) *Density.*

Units per acre	Forty (40) or less
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(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Manufactured home park	100 feet
Lot within a Manufactured home park	50 feet
Single-family	30 feet
Two (2) family	30 feet
Three (3) family or more	70 feet
Professional offices	100 feet

(2) *Lot Area Minimum.*

Manufactured home park	3 acres
Lot within a mobile home park	4,200 square feet
Townhouses: Individual lot	2,000 square feet
Single-family	2,500 square feet
Two (2) family	3,000 square feet
Three (3) family or more	7,000 square feet
Fraternity or Sorority	1 acre

(3) *Land Area Per Dwelling Unit.*

Manufactured Home	3,000 square feet
Fraternity of Sorority	500 square feet per resident

(E) *Setback Requirements.*

Front	Side Other Uses	Side Single & Two (2) Family	Rear Other Uses	Rear Single Family
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	8 feet	5 feet	20 feet	5 feet

(F) *Building Height Regulations.*

Building Height Maximum	2 stories/3 stories/5 stories*
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* 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 two (2) stories, between 10—20 feet from the master street plan right-of-way a maximum height of three (3) stories 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 5 stories.

If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any side boundary line of an adjacent single family district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* The area occupied by all buildings shall not exceed 50% of the total lot area. Accessory ground mounted solar energy systems shall not be considered buildings.

(H) Minimum Buildable Street Frontage. 50% of the lot width.

(Code 1965, App. A., Art. 5(IV); Ord. No. 2320, 4-5-77; Ord. No. 2700, 2-2-81; Ord. No. 1747, 6-29-70; Code 1991, §160.034; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 5028, 6-19-07; Ord. No. 5224, 3-3-09; Ord. No. 5262, 8-4-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 8, 9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6245 , §2, 10-15-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21; Ord. No. 6658 , §7(Exh. F), 5-2-23)

Editor's note(s)—Ord. No. 6710 , §1, adopted November 21, 2023, determines that Ordinance 6427 (Sunset Clause) and Ord. No. 6625 (extending Sunset Clause) be amended so that Ordinance 6427 and all amendments to Code Sections ordained or enacted by Ordinance 6427 shall automatically sunset, be repealed and become void on December 31, 2024, unless prior to that date the City Council amends this ordinance to repeal or further amend this sunset, repeal and termination section.

161.27 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the Main Street/Center. The Center is more spatially compact and is more likely to have some attached buildings than Downtown General or Neighborhood Conservation. Multi-story buildings in the Center are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the Main Street/Center. The Center is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Dwelling (all unit types)	18 feet
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(2) *Lot Area Minimum.* None.

(E) *Setback Regulations.*

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line.
Side	None
Rear	5 feet
Rear, from center line of an alley	12 feet

(F) *Minimum Buildable Street Frontage.* 75% of lot width.

(G) *Building Height Regulations.*

Building Height Maximum	5 stories/7 stories*
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* A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of seven (7) stories.

(Ord. No. 5028, 6-19-07; Ord. No. 5029, 6-19-07; Ord. No. 5042, 8-07-07; Ord. No. 5195, 11-6-08; Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5735, 1-20-15; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6223 , §1, 9-3-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21)

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Submission #2: April 3, 2024

RE: VERVE Fayetteville – Rezoning Application

We are pleased to submit our rezoning application associated with VERVE Fayetteville. The approximately 2.9-acre project site (the "Property") is generally located at W. Treadwell Street and S. Hill Avenue and includes 707 W. Treadwell Street, 191 S. Hill Avenue, and 92 and 98 S. Duncan Avenue (Figure 1 and Figure 2).

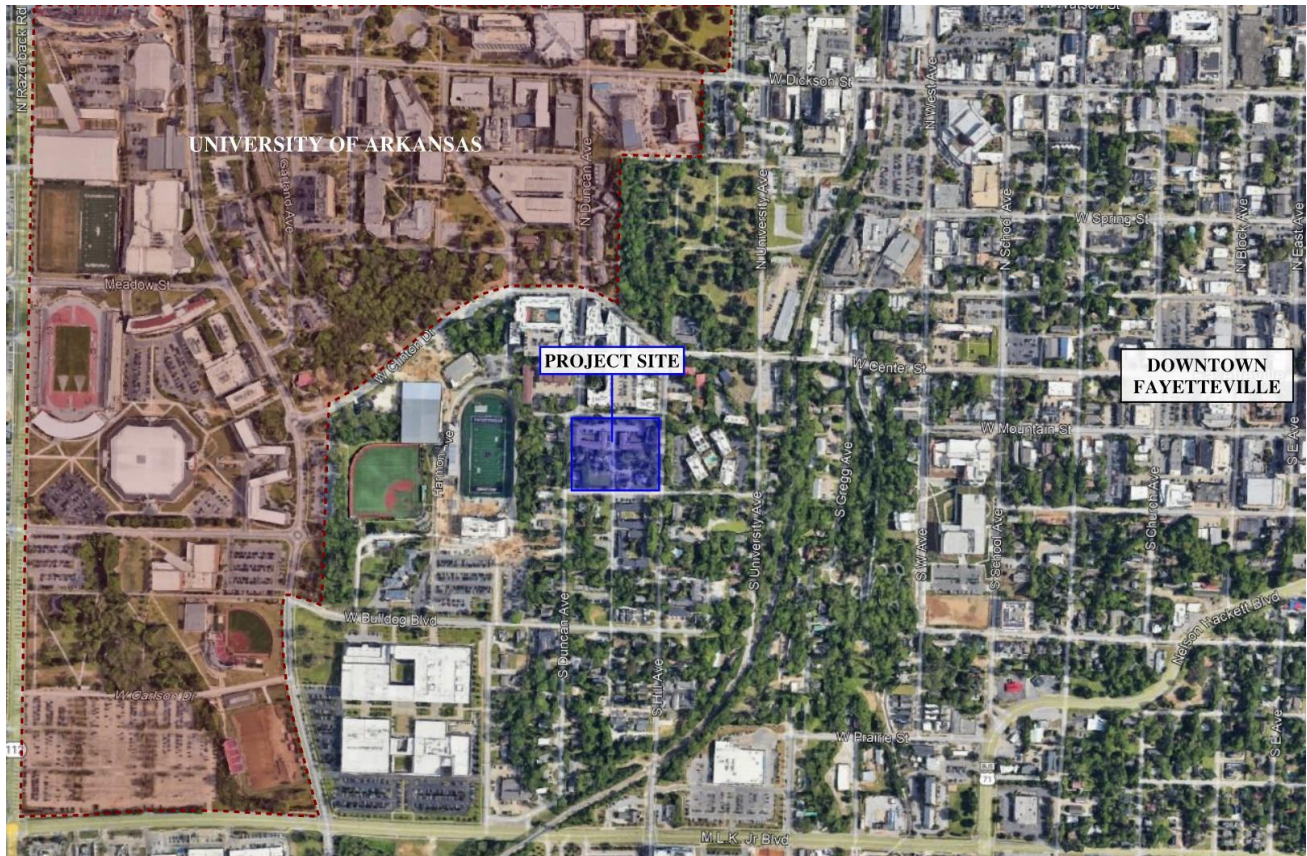


Figure 1, Location Map



Figure 2, Property

The Property is currently zoned RMF-40 (Residential Multi-family – Forty 40 Units per Acre) and is designated by the City Plan 2040 as City Neighborhood Area. The Property is subject to approximately 15-feet of grade change and a significant power transmission line easement that reduces the useable area by approximately 0.28-acres. We are proposing to rezone the Property to MSC (Main Street Center), with a Bill of Assurances, to allow for building forms and densities consistent with the Future Land Use and to further the goals of the City Plan 2040. The additional building height permitted by MSC will allow for some taller portions of the structure, located away from the edge of the right-of-way, to accommodate the needs of the project and which could not be achieved through other districts such as Downtown General.

Compatibility with Neighboring Property.

The neighboring properties are zoned Residential Multi-Family and Downtown General, with Main Street Center and Residential Office zonings located nearby along S. University Avenue. The neighboring properties to the North and East are currently high-density multi-family communities, and the neighboring properties to the South and West are currently multi-family and single-family.

The allowed uses under MSC, as modified by the Bill of Assurances, and building forms generally align with those allowed under the adjacent DG districts (Figure 3). DG would provide all uses being sought for this project except for the allowance of the additional height, therefore this submission is purposefully providing the Bill of Assurances to tailor the compatible development with the stories allowed under MSC. The additional uses that would be permitted on the Property, such as shopping, offices, and cafes, can promote a mixed-use, live-work environment for the neighboring residential uses.

Compatibility with City Plan 2040.

The proposed rezoning will allow for infill development promoting multi-modal transportation, utilization of existing infrastructure, and increased density near Fayetteville's employment and civic hubs. We believe that the proposed rezoning furthers the following City Plan 2040 Goals and Objectives:

Goal 1 – We will make appropriate infill and revitalization our highest priority.

Goal 1 Objective: Recognize the benefits and cost savings of utility and road infrastructure that already exists in the core of the city.

The proposed rezoning will support development that utilizes, and may improve, existing utility and road infrastructure in a core location.

Goal 1 Objective: Promote the densest development around logical future transit stops.

There is currently a Razorback Transit Stop at the Property, and it is within 0.5-miles of a Fayetteville ORT stop (Hillcrest Towers). The proposed rezoning will support density located nearby and promoting alternative transit.

Goal 1 Objective: Encourage new development that supports and compliments the unique characteristics and economic values of employment clusters in and around downtown and the U of A.

The proposed rezoning will support additional housing in a central location, promoting walkability, alternative transit, and convenient access to the businesses and services within Fayetteville's urban core.

Goal 2 – We will discourage suburban sprawl.

The proposed rezoning will support development that is compact and efficient, utilizes and improves existing infrastructure, and promotes walkability and the use of alternative transit methods.

Goal 3 – We will make compact, complete, and connected development the standard.

Goal 3 Objective: Require new growth that results in neighborhoods, districts and corridors that are compact, complete, and connected.

The proposed rezoning will support development which improves pedestrian and bicycle infrastructure and creates an active and engaging streetscape environment.

Goal 3 Objective: Prepare a transit-worthy community: increase density in highly walkable areas along logical future transit routes and anticipate rail, street cars and other alternative transit modes.

The proposed rezoning will support development in a location that is adjacent to alternative transit and is pedestrian to education centers, grocery stores, restaurants, shopping, parks, trails, and more.

Infill Assessment.

The Property has an Infill Prioritization Score of 12 (Figure 3). There are existing water and sewer mains on multiple sides of the Property. It is within 0.5-miles of a grocery store (Walmart Neighborhood Market located on MLK Jr Boulevard). It is directly adjacent to a public school (Fayetteville High School) and one block away from the University of Arkansas campus. It is within 0.5-miles of several parks and trails (Fay Jones Woods, Frisco Trail, Oak Ridge Trail, and more). There is a Razorback Transit Stop at the Property, and it is within 0.5-miles of a Fayetteville ORT stop (Hillcrest Towers).



Figure 3, Infill Assessment

Master Street Plan.

To Property is one block away from streets designated as Neighborhood Link (Center Street) and Downtown/Urban (S. University Avenue). These typologies are intended to promote high-quality and comfortable realms for pedestrians and cyclists through low-speed zones, wider sidewalks, landscape buffer zones, and dedicated bicycle facilities.

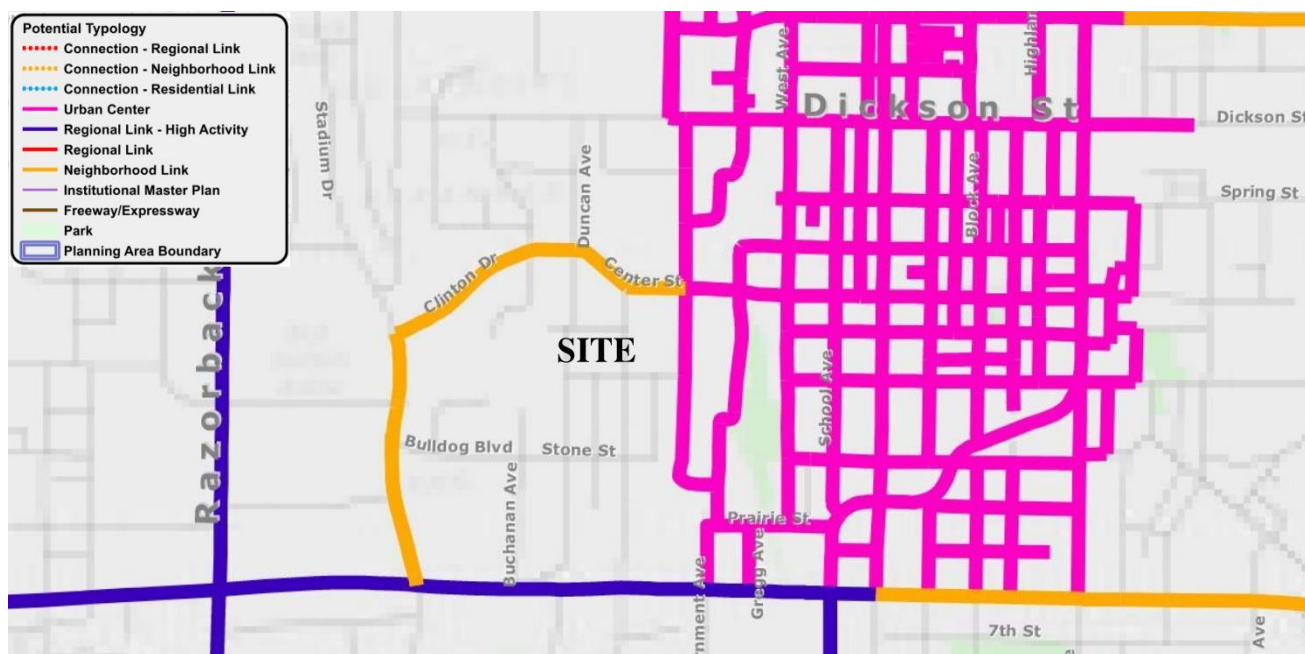


Figure 4, Master Street Plan

Active Transportation Plan.

The Active Transportation Plan proposes a future on-street bicycle facility at the Property. Future development of the Property would allow for an on-street bicycle facility to be constructed for future connection by neighboring properties or the City of Fayetteville.

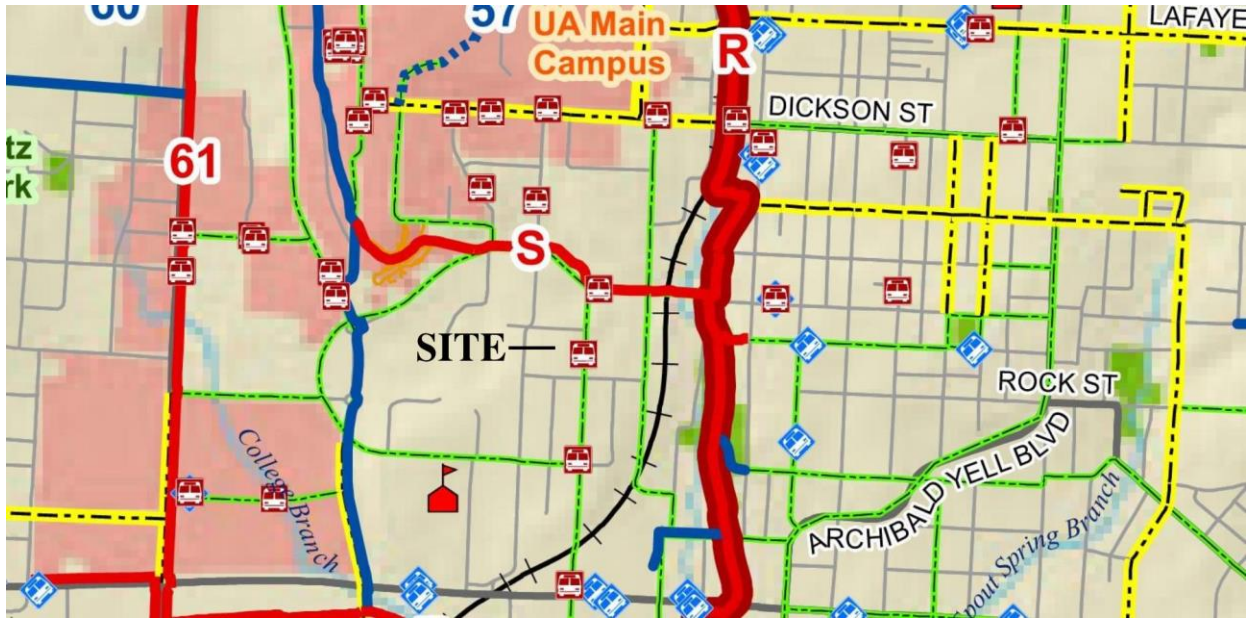


Figure 5, Active Transportation Plan

Thank you in advance for your consideration and support of this compatible rezoning. We look forward to working with the City of Fayetteville to plan a quality project of which we can all be proud and further the smart growth of Fayetteville by densifying in an appropriate location adjacent to the University of Arkansas, to provide quality housing.

Sincerely,

Dylan Lambur

Dylan Lambur

Development Manager

Subtext

BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

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

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

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

1. The following uses shall not be permitted:

Unit 17, Transportation trades and services;

Unit 34, Liquor stores; and

Unit 45, Small scale production

2. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

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

Date

Printed Name

Address

Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the ____ day of _____, 20____, appeared before me, _____, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

NOTARY PUBLIC

My Commission Expires:

**STAFF EXHIBIT
CURRENT DEVELOPMENT**

PID: 765-04804-000: Summit Terrace Apartments. Forty (40) residential units within two buildings constructed in 1964. One permit for HVAC renovation in 2023. No additional building permits found for structures.

PID 765-04089-000: One single-family residence constructed in 1936. Multiple code violations for health and sanitation (Two in 2016, One in 2020).

PID 765-04808-000: Five residential dwellings constructed in 1940. Multiple code violations for health and sanitation (Two in 2009, one in 2010, one in 2020).

PID 765-04807-000: No primary structures.

PID 765-04806-000: Two-family dwelling constructed in 1931. Four-family dwelling constructed in 1951. One permit for HVAC renovation in 2022. No additional building permits found for structures.

PID 765-04805-000: Single-family dwelling constructed prior to 1980 (first year building is visible on aerial). No building listed in Washington County Assessor.



Policy Options for the Future

This assessment does not propose that the solution to housing affordability is to rezone the entirety of Fayetteville to RMF-24 zoning. Similarly, zoning is not the only solution to high and growing housing costs. Policy choices can, however, focus on adding housing density in strategic places to take advantage of existing infrastructure in high intensity areas that don't currently allow for housing. When combined with existing services, infrastructure, and amenities, these housing units can provide a number of benefits, including reducing vehicle trips. Fayetteville's City Plan 2040, the comprehensive plan adopted in 2020, includes several options for additional housing density in core areas that are already high intensity and offer close access to services.

Staff in the City of Fayetteville's Long Range Planning and Sustainability divisions worked with University of Arkansas graduate students in the Master of Public Administration program in the spring semester of 2023 to analyze three scenarios for single-family housing. The students produced a report at the end of the semester that aimed to identify the most effective zoning policy to increase single family residential density in Fayetteville. The three scenarios explored were a baseline analysis of maintaining the zoning status quo; rezoning all residential single-family zones to the RSF-8 zoning district; and allowing duplex, triplex, and fourplex construction by right in all current single-family zoning districts. Based on their analysis, the students recommended the third option, writing, "Increased housing diversity has the greatest net social benefit for Fayetteville. In addition to having the greatest potential for increased housing supply, this policy is the most efficient and equitable. Overall, creating the option for multifamily unit construction by right provides the strongest policy for Fayetteville's future growth." Although the report focused on single-family zoning, the lessons learned and the main point — that creating the option for multi-unit housing by right is the strongest policy for Fayetteville's future growth — align with the planning work and master plan documents/corridor planning that Fayetteville has been engaged in for the last several years.

Prior to the onset of the COVID-19 pandemic the City of Fayetteville was engaged in writing and implementing two key plans that set a priority for both housing and a high-quality urban environment. City Plan 2040 was adopted only months prior to the pandemic-related closure of city offices and the quick adjustment to online meetings and engagement. Several plan implementation steps were paused for about two years while community health and safety were prioritized, and the city is now moving forward again to engage with the community to address the challenges that arose just prior to and during the pandemic that are the impetus to bring the implementation actions from these adopted plans back into the spotlight.

Long Range Plan Implementation

Fayetteville's City Plan 2040 was written to support the city's six goals:

1. **We Will Make Appropriate Infill and Revitalization Our Highest Priority.**
2. **We Will Discourage Suburban Sprawl.**
3. **We Will Make Compact, Complete, and Connected Development the Standard.**
4. **We Will Grow A Livable Transportation Network.**
5. **We Will Assemble An Enduring Green Network.**
6. **We Will Create Opportunities for Attainable Housing.**

All six goals have short-term, long-term, and ongoing "benchmarks," or action items to implement the adopted plan. Page 47 of the plan lists the short-term benchmarks, or action items meant to be accomplished between 2019 and 2025. Although plan implementation has been somewhat delayed by the COVID-19 pandemic, 8 of the 25 short-term benchmarks are not yet underway but are directly related to the city's role in responding to population growth and increasing housing supply, and that the Fayetteville City Council could consider prioritizing (City Plan 2040 associated goals and current status listed in parentheses):

- Develop internal processes to align funding, development and planning of city infrastructure with the goals of City Plan 2040. (Goal 1 & 2; ongoing with streamlined permitting and new software)

- Identify existing properties that are vacant or prime for redevelopment and initiate form-based rezoning discussions with property owners. (Goal 1, 2, & 3; ready to begin with 71B rezoning)
- Evaluate development thresholds based on quantitative metrics such as building form, not building type, and the encouragement of missing middle housing. (Goal 1, 2, 3, and 6; ongoing)
- Evaluate conditional use permit vs. use-by-right for appropriate infill. (Goal 1; ongoing)
- Identify gaps in affordability throughout the city and set numerical targets for housing that is affordable to a variety of households, including workforce, supportive, low income, families with children, and senior housing. (Goal 1, 3, 4, & 6; initiated with this analysis)
- Promote long-term affordability by targeting the use of public funds for the lowest income households, including those who are homeless, at risk of homelessness, or who have other special needs. (Goal 6; ongoing with federal HOME and American Rescue Plan Act funds)
- Examine potential regulatory barriers and policies that impede the provision of household affordability, including: infrastructure costs, the costs and benefits of development ordinances on housing development, and how the City's fees and requirements impact the cost of living for households in Fayetteville. (Goal 1 & 6; development fee study underway)
- Identify opportunities for the creation of affordable housing on publicly-owned land and develop partnerships with developers to provide flexible, affordable work space and housing. (Goal 6; initial discussions and review of potential projects underway)

Long-term benchmarks (more than five years from plan adoption) that are directly related to housing but not yet underway are:

- Evaluate the development and implementation of a tiered impact fee system. (Goals 1 & 2; not yet begun)
- Evaluate existing street design speed, operating speed and posted speed limits, to ensure that each is appropriate based on the roadway design and context of the surrounding environment. (Goal 4; ongoing with speed limit review and traffic calming procedures in residential neighborhoods)
- Create a complete neighborhood or street corridor plan every other year utilizing a charrette process and analyze water and sewer capacity to identify opportunities or limitations for development. (Goal 1, 4, & 6; not yet begun)

Ongoing benchmarks should also be highlighted here given the pause in plan implementation, as some may need to be prioritized for action:

- Support rezoning proposals that result in increased density around logical future transit stops, rail corridors and major transportation corridors. Recommendations should generally align with the Growth Concept Map. (Goal 4)
- Support development and redevelopment opportunities along the existing rail line. (Goal 4)
- Support and implement the goals, strategies and actions of the transformational 71B Corridor plan. (Goal 1, 2, & 4)
- Implement and utilize the Growth Concept Map to strategically incentivize the development of Tier-1, Tier-2, and Tier-3 commercial and mixed-use nodes along major corridors and as neighborhood centers. (Goal 1, 2, 3, 4, 5, & 6)
- Support the creation of a "real-time" database of available affordable housing units, services, resources, and incentives to strengthen the process of connecting qualified buyers and renters with affordable housing to comprehensively lower monthly household expenses. (Goal 6)
- Promote long-term affordability by developing new goals, targets, and strategies to promote the distribution of affordable housing in all parts of the city, including incentives for affordable housing in new developments and for the preservation of existing rental units. (Goal 6)

The remaining benchmarks do not have to be approached separately, but could instead be pulled together in a complete approach to developing housing solutions, particularly in areas of the city that have been identified as best able to support dense housing along major corridors and in places that support a mix of

housing and commercial development, such as Fayetteville’s downtown area. As an example of the potential for a cohesive approach to plan implementation, three of the items listed in the ongoing benchmarks are closely tied together and could be approached as a single project. Supporting zoning proposals around major transportation corridors, supporting and implementing the goals, strategies and actions of the 71B Corridor Plan, and implementing and utilizing the Growth Concept Map on pages 13–16 of the plan document could all come together with a city-initiated project to rezone property along the 71B corridor (College Avenue, Nelson Hackett Boulevard, and South School Avenue) to allow for housing on properties that have extensive existing infrastructure, are located along a major transportation corridor that is already scheduled for additional investment to support development and alternative transportation, and that have limited proximity to existing residential neighborhoods. Additionally, there are multiple tier centers along this route that could be incorporated as part of the implementation of the growth concept map, furthering plan implementation in the same project.

Preserve Existing Affordable Housing

Table 3 on page 20 of this assessment showed current average monthly rents for new apartments, with average rent for a two bedroom apartment just over \$1,400 per month. Table 4 on the same page showed that affordable housing costs for the median household income in Fayetteville should not exceed \$1,325 per month, which includes utilities and insurance costs. Current rents for newly constructed housing units are above affordable costs for at least half of Fayetteville households, and building new housing units does not provide a successful solution if the new units are at the cost of losing existing affordable housing.

In 2019 the City of San Antonio, Texas, engaged the firm PlaceEconomics to assess the risks to older and existing affordable housing stock as the city experienced rapid population growth and redevelopment. The results of this assessment, published as the report *Opportunity at Risk*,¹³ were a caution against the assumption that newly constructed housing is the best way to achieve affordable housing goals. Some of the context of the 2019 report presented in the Executive Summary would be familiar to Fayetteville today:

- One in three San Antonio households is spending more than 30 percent of their income on housing and nearly half of all renters meet this “cost burdened” threshold.
- Over the last decade, while median household income increased 1.9% per year, housing prices increased at 4.7% per year.
- While San Antonio is experiencing greater than national average growth in jobs and housing, most of the new homes are large and expensive, and much of the job growth is in lower wage jobs.
- The existing pre-1960 housing stock is providing largely unsubsidized and unprotected affordable housing.
- Single family, renter-occupied structures in fair and poor condition are the most at-risk of demolition.

The main takeaway of the report is clear and succinct: “A city cannot build itself out of a housing crisis — the retention of existing housing stock is critical.” Additionally, the report claimed three demonstrable premises:

1. One cannot build new and rent or sell cheap without subsidy.
2. Almost by definition when a unit of older housing is razed, a unit of affordable housing is lost forever.
3. Existing affordable housing programs — as useful and successful as they may be — must be realigned to address older housing stock.

The conclusion provided a caution to other rapidly growing cities facing housing affordability challenges:

¹³ Report available at sanantonio.gov/Portals/0/Files/HistoricPreservation/CurrentProjects/AffordableHousing/OpportunityAtRisk-Report.pdf

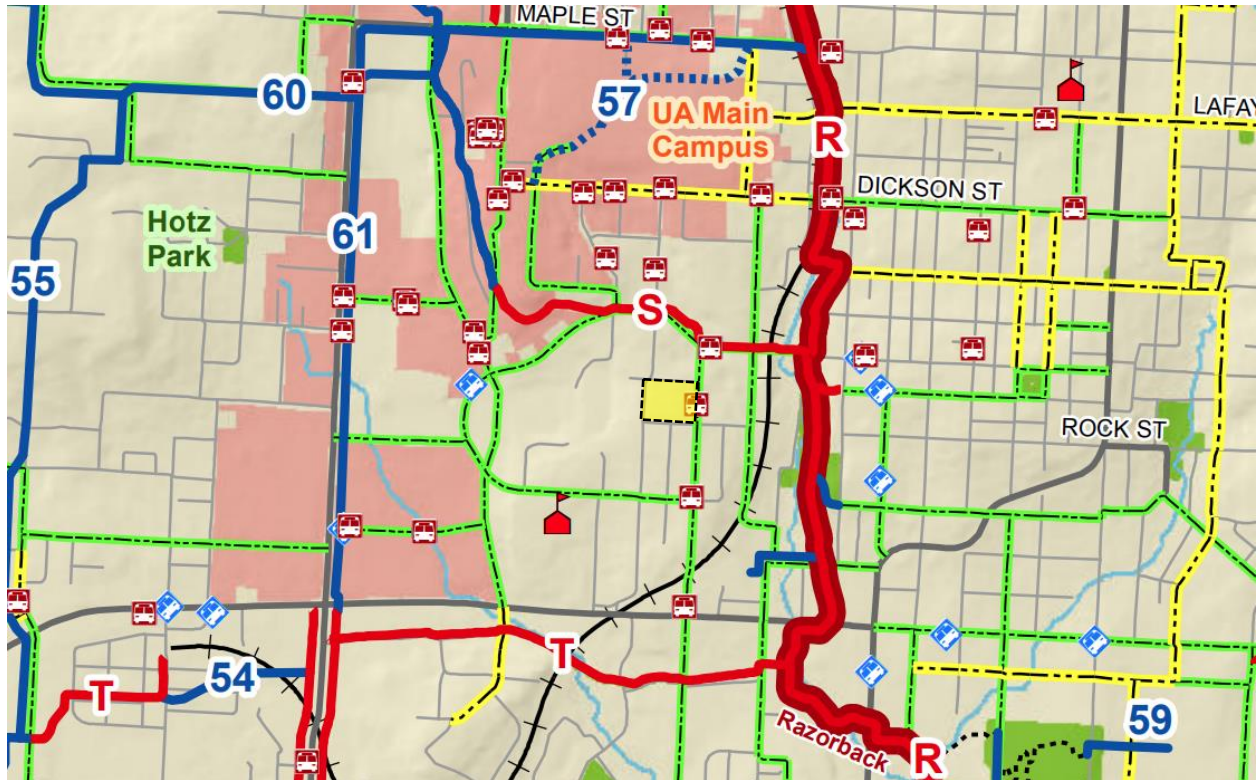
“Until the City of San Antonio can put new programs and policies into place, to reach the goal that the “average San Antonio family can afford to buy a home,” the data illustrates that San Antonio is systematically razing housing that is affordable and building housing that is not.” As Fayetteville looks to add housing units to supply, it is worth noting that new supply should be carefully balanced with preserving existing affordable housing — housing that can be in areas prime for redevelopment due to growing land values compared to declining value of aging structures.

Programs that provide assistance to low income households to help residents stay in their homes are a key part of preserving existing affordable housing. The City of Fayetteville’s Community Resources Department completed home repair and rehabilitation projects for eighteen housing units and thirty-two residents in 2022 with funding from federal Community Development Block Grants (CDBG). The CDBG Program supports community development activities to build stronger and more resilient communities. To support community development, activities are identified through an ongoing process. Activities may address needs such as infrastructure, economic development projects, public facilities installation, community centers, housing rehabilitation, public services, clearance/acquisition, microenterprise assistance, code enforcement, homeowner assistance, etc.¹⁴ The 2022 housing program projects in Fayetteville included roof repair, replacement and installation of heating and cooling equipment, repairs of holes in floors, new plumbing fixtures, new flooring, new windows, and plumbing repairs.

As of this assessment in 2023, the Community Resources Department has supported thirteen projects and eighteen residents with repair work that has included drywall repair, new roofs, new windows, new plumbing fixtures, basement remediation, and new plumbing fixtures. Total project costs for 2023 currently total \$118,365 with an average project cost of \$9,105. Participation in the CDBG program and accessing federal home repair funds will continue to be an important tool for preserving affordable housing for residents and keeping families in their homes.

¹⁴ hudexchange.info/programs/cdbg/

STAFF EXHIBIT: ACTIVE TRANSPORTATION PLAN EXCERPTS



Active Transportation Plan

- Proposed Shared-Use Paved Trail
- Proposed U of A Campus Connections
- Proposed On-Street Bicycle Facility

Existing Trails

- Shared-Use Paved Trail
- Nature Trail
- Neighborhood/Park Trail
- On-Street Bicycle Facility

- Park
- Lake
- ~ Stream
- School
- Fayetteville City Limits
- Razorback Transit Bus Stop
- Ozark Regional Transit Bus Stop
- Street (Major)
- Street
- Railroad

PLAN VISION AND GOALS

ACTIVE TRANSPORTATION PLAN
plan vision and goals

PLAN VISION

The Active Transportation Plan (ATP) has been developed through numerous planning and visioning exercises both locally and region wide. The ATP proposes to consolidate and summarize all of the various alternative transportation planning processes, policies and programs with the following vision statement: "Fayetteville endeavors to develop and promote an interconnected and universally accessible network of sidewalks, trails and on-street bicycle facilities that encourage citizens to use active/non-motorized modes of transportation to safely and efficiently reach any destination."

- 1 ENDEAVOR TO CREATE AN INCLUSIVE MULTI-MODAL TRANSPORTATION SYSTEM.
- 2 WORK TO BUILD A TRAIL CONNECTION WITHIN ONE HALF MILE OF EVERY RESIDENCE.
- 3 INCREASE THE ACTIVE TRANSPORTATION COMMUTING MODE SHARE FROM 7.5% TO 15% BY 2020.
- 4 IDENTIFY AND CORRECT MISSING BICYCLE AND PEDESTRIAN LINKAGES.
- 5 PARTNER WITH ADVOCATES TO ADDRESS BICYCLE AND PEDESTRIAN NEEDS.
- 6 EARN BICYCLE FRIENDLY COMMUNITY DESIGNATION OF SILVER BY 2017.

STAFF EXHIBIT: PROXIMITY TO TIER CENTERS (CITY PLAN 2040)

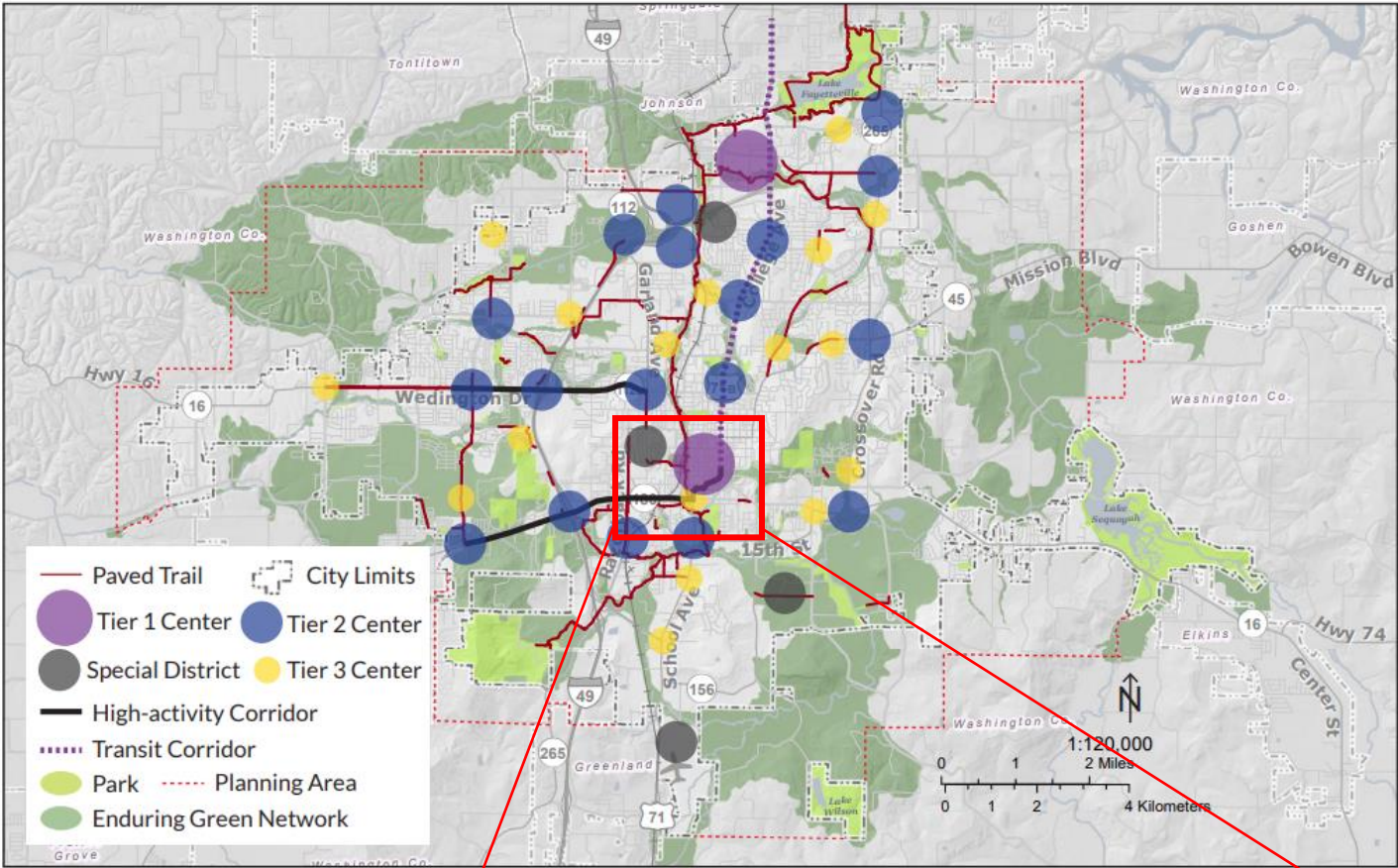
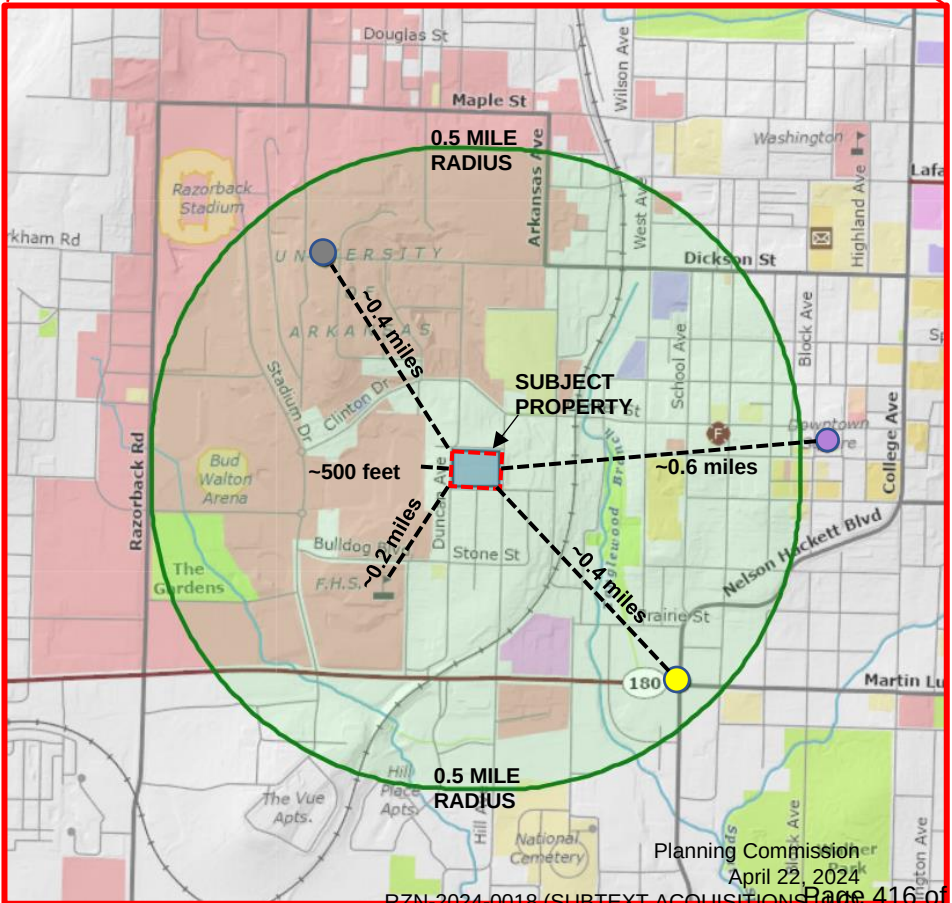


Figure 2.0 - Growth Concept Map



STAFF EXHIBIT: CITY PLAN 2040 EXCERPTS

Introduction

3.1.4 Promote the densest development around logical future transit stops.

For transit to be utilized and cost effective requires density; density of residences, jobs, commercial areas and other destinations. The University of Arkansas Razorback Transit is well used in areas of the city close to campus where many students live and study. On the other hand, Ozark Regional Transit serves areas of Northwest Arkansas that may not be particularly dense or have high employment numbers. The lack of density challenges the cost effectiveness of transit and the real or perceived convenience of utilizing transit for commuting and day-to-day transportation needs for residents. One of the things that the City can do is to encourage redevelopment of College Avenue to increase residential density and commercial intensity. The 71B College Avenue Corridor Plan envisions this arterial roadway to transform incrementally over time into a mixed-use urban thoroughfare that would provide transit operators with more “capture”, thereby becoming more cost effective and increasing customer convenience with more frequent buses. Logical transit stops city-wide should be planned and developed in accordance with the tiered activity centers identified on the Growth Concept Map. Ultimately, transit can make housing more affordable for Fayetteville residents by freeing up money typically encumbered by transportation expenses in household budgets.



Photo 3.4 - Walker-Stone House



Photo 3.5 - Former Public library

3.1.5 Reinvest in parks, streets, and civic buildings within the heart of the city.

The tree-lined streets, parks, and historic civic buildings found in Fayetteville's older neighborhoods greatly contribute to the unique community character and high quality of life that residents treasure. Preservation of our tree-lined streets and parks and adaptive reuse of our historic civic buildings will maintain the community cultural identity. The City should continue to utilize the Enduring Green Network map to identify and preserve high-value open spaces that help to create an interconnected green network throughout the community.



Photo 3.6 - Historic County Courthouse and Center Street

3.1.6 Encourage historic preservation and adaptive re-use of buildings.

Historic preservation is crucial in retaining a community's character, identity, and evolutions. Preservation and restoration can be an effective tool for economic development and revitalization, achieving urban sustainability through reducing waste and emissions, and maintaining property values. Recent calculations indicate that it takes 35 to 50 years for a new energy efficient building to save the amount of energy lost in demolishing an existing building (National Trust for Historic Preservation).



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Introduction

3.1.8 Encourage new development that supports and complements the unique characteristics and economic values of employment clusters in and around downtown, the U of A, the north end, the rail corridor, Drake Field and the Industrial Park.

There are two emerging central places in Fayetteville that contain a mixture of residential and commercial land uses, alternative transportation linkages, and employment centers in proximity to each other. At a neighborhood scale, this mixture of uses is often described as a “complete, compact and connected” place. The downtown/university area of the central city is rapidly redeveloping with residential and commercial activities and the uptown area is filling-in with medium-density residential to complement some of the existing commercial and office uses. Both districts have street network needs that should be addressed to encourage the efficient use of land and transportation improvements for each are described as recommendations in the Fayetteville Mobility Plan.

The Infill Assessment Map tool that staff developed as part of this plan update

provides a general locational framework for identifying parcels and areas that have proximity to existing utilities, infrastructure and services. Undeveloped or underutilized lands that score highly on the Infill Assessment Map should be considered prime candidates for future development with uses and building forms that are complementary to the existing neighborhood.

The Growth Concept Map is also useful for encouraging the development of mixed-use and neighborhood-scaled central places that provide nearby residents with some of their daily needs in proximity.

3.1.9 Determine feasibility of a tiered impact fee system.

A tiered impact fee system requires new development to pay its proportionate share

of the costs to the municipality associated with providing necessary public services to the development based on its location. Tiered impact fees are based on the general acknowledgement that parcels and locations that are near the core of the city would have less impact, and areas on the urban fringe have more impact. Development on the fringe of the city will cost the City more over time to provide street infrastructure, water and sewer, and life-safety services. Therefore, development on the fringe should pay a higher impact fee upfront for these utilities, infrastructure and services. Phoenix, Arizona, Bellevue, Washington, Kansas City, Missouri and Conway, Arkansas have all implemented an impact fee system where the fee varies depending on where the development is proposed.



Photo 3.8 - Construction in Downtown Fayetteville



3.3 Goal 3 - We will make compact, complete, and connected development the standard

Historically, a traditional town form is the concept of creating compact, complete, and connected neighborhoods at a human scale, as opposed to an automotive scale. Much of Fayetteville developed post-World War II is created for the convenience of automobiles. Over the last decade, citizens of Fayetteville clearly indicated through public planning processes that they desire development patterns that place a high priority on human scale development patterns. This means pedestrian-oriented buildings, streets and multi-modal transportation options. This has been reflected in new form-based zoning codes where buildings address the street, construction of multi-use trails and an on-street bicycle network, and public investment in new sidewalk and pedestrian improvements along major corridors. Traditional town form alludes to development patterns prior to World War II that placed an equal priority on humans and automobiles. As a result, this pattern can achieve a much higher level of neighborhood cohesion and land use diversity compared with an auto-oriented development pattern where land uses are rigidly separated. Components that are common to a compact, complete, and connected built environment include: interconnected street networks, build-

"[Infill] makes spaces more walkable. It's frustrating to have to drive through a large, empty parking lot to get to a storefront. It makes one feel exposed as a pedestrian as well. I love the new infill developments because it seems like a better use of space." - Survey Respondent



Figure 3.8 - Dover-Kohl Corridor Development



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Goal 3 Objectives

3.3.1 Require new growth that results in neighborhoods, districts and corridors that are:

- **Compact** – via denser housing; meaningful open spaces and preserves; small blocks
- **Complete** – via housing; mixed uses; civic uses; jobs-housing mix in the neighborhoods
- **Connected** – via street-oriented buildings; interconnected streets; interconnected greenways and trails

3.3.2 Prepare a transit-worthy community: increase density in highly walkable areas along logical future transit routes, and anticipate rail, street cars and other alternative transit modes.

The 71B College Avenue Corridor Plan provides a framework for incrementally re-developing this major thoroughfare into a series of inter-connected and livable mixed-use districts. The City can provide redevelopment catalyst by making capital investments in increased street, sidewalk and trail connectivity.

3.3.3 Increase the viability of businesses by leveraging the economic performance of appealing environments that are mixed-use, walkable, and integrated with green space.

The Razorback Regional Greenway illustrates the ability of the City to leverage capital investments in trail infrastructure to drive economic development. The City created the Fayetteville Alternative Transportation and Trail Plan in 2003 and began building the Scull Creek Trail with \$2.1 million in funding provided by a bond issue passage. Additional yearly Capital Improvement Project funding of \$1.3 million annually was used to build-out the remainder of the trail. The economic development catalyst that the trail provided is evidenced by the residential and commercial development occurring in nodes along the trail spine in south Fayetteville, throughout downtown/Dickson Street, in mid-town around Poplar Street, and throughout the uptown district along Mud Creek.



Figure 3.10 - Example Development Layout



Figure 3.11 - Example Development Layout



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Climate Action Plan

① Overall Goals

62%
GHG
reduction
by 2030

Net zero
emissions by
2050

Aligns with Science Based Target Network

- Based on IPCC goal of 50% global GHG reduction by 2030, equitably adjusted for U.S. development and climate contributions
- Used by cities across the country

Aligns with Paris Climate Accord & Science Based Target Network

- Recognizes necessity of reducing all greenhouse gases, not just carbon dioxide



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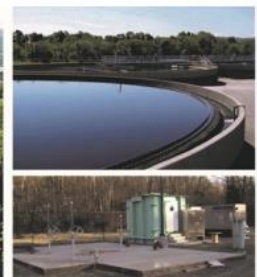
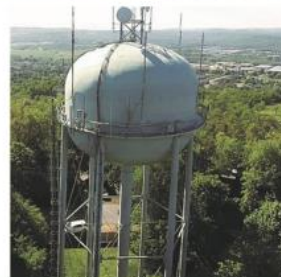
Climate Action Plan: Emissions Reduction Sector Goals

TRANSPORTATION:

- Reduce per capita transportation emissions year over year
- Create an equitable and sustainable multimodal transportation system for all ages and abilities
- Reduce city government fleet emissions year over year

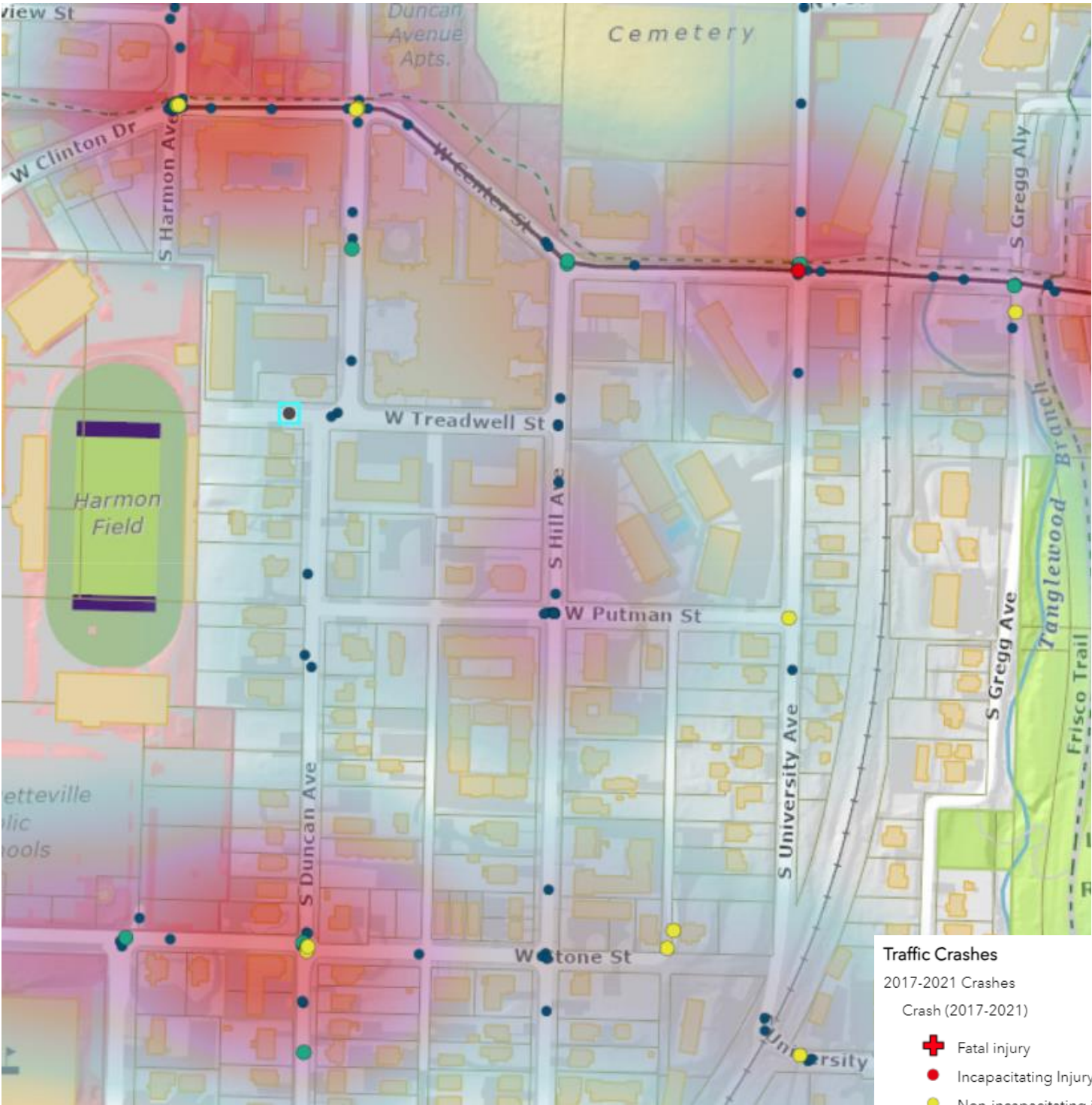
WATER:

- Prepare, plan, and develop community response strategies and contingencies for extreme weather events such as, heatwaves, droughts, and floods.
- Achieve per capita water consumption reductions year over year.
- Identify and prioritize the repair and installation of water system infrastructure to alleviate water leakage and accommodate growing system demands.



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STAFF EXHIBIT: ENERGY ACTION PLAN EXCERPTS
STAFF EXHIBIT: TRAFFIC ACCIDENTS



Wonsower, Donna

From: Scott and Jasmine 104 Duncan <hoghouse104@gmail.com>
Sent: Monday, April 8, 2024 8:45 AM
To: Planning Shared
Cc: Wonsower, Donna
Subject: Re: project inquiries for my neighborhood

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you so much for the information!

On Mon, Apr 8, 2024 at 8:23 AM Planning Shared <planning@fayetteville-ar.gov> wrote:

RZN-2024-0002 Was denied at the 3/11/2024 Planning Commission Meeting

RZN-2024-0018 Is scheduled for the 4/22/2024 Planning Commission Meeting.

Attached is all the information we currently have. If you have any further questions, the planner assigned to RZN-2024-0018, Donna Wonsower, should be able to answer them.

Thank you

Mirinda Hopkins

Development Coordinator

Planning Division

City of Fayetteville

479-575-8267

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Scott and Jasmine 104 Duncan <hoghouse104@gmail.com>
Sent: Friday, April 5, 2024 5:02 PM
To: Planning Shared <planning@fayetteville-ar.gov>
Subject: project inquiries for my neighborhood

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi! I own the property at [104 S. Duncan Ave.](#) and was hoping to find out more information about the plans for the following rezoning projects in my neighborhood:

- RZN-2024-0002 ([740 W Stone St.](#))
- RZN-2024-0018 (Treadwell - Putman 3.10 acre block)

I plan to attend the hearings if I can, but I was hoping to find out some information before then. Do you know what type of development they are considering? My major concerns have to do with traffic congestion, parking issues in this area, and property values.

Thank you for taking the time to respond to my inquiry.

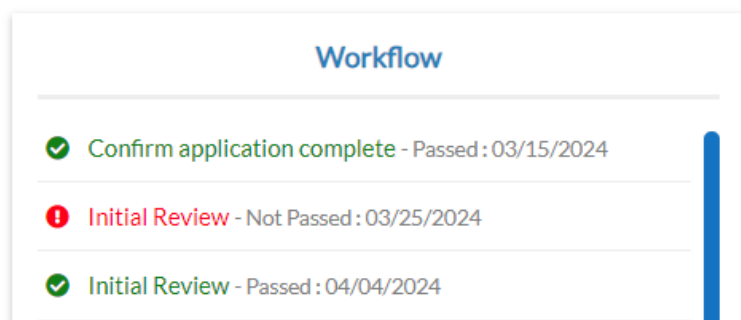
Jasmine Nile

Wonsower, Donna

From: Wonsower, Donna
Sent: Wednesday, April 10, 2024 2:18 PM
To: kat.a.cook3@gmail.com
Cc: Planning Shared
Subject: RE: S Duncan Rezoning

Good Afternoon,

The proposed rezoning (RZN-2024-0018) has not been approved yet. If you are looking on the Citizen Self Service portal and see a “passed” as shown below, that indicates only that staff has approved the submittal documents and that no additional revisions are required for the document to be heard at planning commission.



This rezoning is not scheduled to be heard until the April 22 Planning Commission meeting, which begins on the second floor of City Hall at 5:30. As the public notice letters were delivered to the post office late last week, it is likely that those letters are still in transit through the post office and will be arriving shortly. All property owners and residents within 200 feet must be notified per city ordinances, and staff confirmed that all required parties were included in the applicant’s certificate of mailing.

The Planning Commission meeting on April 22 is open to the public, and any member of the public who wishes to speak will have up to three minutes to speak at that meeting. If the Planning Commission does forward the request to City Council, there is also opportunity to speak at that meeting as the City Council makes the final determination on any proposed rezoning. Both meetings also have an option to attend virtually.

Staff is currently working on the staff report for this item, which should be posted to the city’s website around the end of next week. Any public comments we receive by next Thursday, April 18 will be incorporated into the packet for the Planning Commission’s consideration. Anyone may also provide an email to the planning department for inclusion within the Planning Commission packet, and I will make sure to include this email when compiling the document. I can also incorporate verbal comments given over the phone or in-person. Any verbal comments received are summarized in the public comment section of the report, while written comments are included in the packet as a whole. If anyone submits a comment after the packet is finalized, staff will forward the email to the commissioners and update the presentation to account for the additional comment.

I’m happy to discuss further if you have any additional questions.

Best Regards,
Donna Wonsower (she/her)
Planner, Development Services

479-575-8358

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Planning Shared <planning@fayetteville-ar.gov>

Sent: Wednesday, April 10, 2024 1:52 PM

To: Wonsower, Donna <dwonsower@fayetteville-ar.gov>; kat.a.cook3@gmail.com

Subject: FW: S Duncan Rezoning

Kathryn,

Donna Wonsower is the planner assigned to this project.

Donna, please read below.

Thank you

Mirinda Hopkins

Development Coordinator

Planning Division

City of Fayetteville

479-575-8267

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Kathryn Cook <kat.a.cook3@gmail.com>

Sent: Wednesday, April 10, 2024 11:41 AM

To: Planning Shared <planning@fayetteville-ar.gov>

Subject: Fwd: S Duncan Rezoning

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am forwarding an email I just sent to my City Council representative about the rezoning of my neighborhood for more large scale housing "luxury" apartments, or student housing. None of us were aware of this, of course, and now we have no way of fighting. Please read these concerns. I've spoken to many who live in this neighborhood and I currently live at 98 S Duncan and have for 12 years. I implore you to rethink this decision that will put an entire block of affordable housing renters onto the streets of Fayetteville.

Thank you for your time,
Kathryn Cook

----- Forwarded message -----

From: **Kathryn Cook** <kat.a.cook3@gmail.com>

Date: Wed, Apr 10, 2024, 11:35 AM
Subject: S Duncan Rezoning
To: <sarah.bunch@fayetteville-ar.gov>

Good morning,

I'm reaching out because I live at 98 S Duncan Ave and have for 12 years. We recently just found out that our apartment is being sold for a large development, possible student housing. I just looked online and apparently the rezoning went through, even though none of us knew it was happening and could not speak up.

I'm trying to understand our options. This development is going to destroy an entire block of affordable rental housing. No one in this neighborhood wants this. Furthermore, we will all be left homeless because there is no rent in this town that's as affordable as ours and we're still fighting to make ends meet.

I'm an Architect and I love where I live, the community, the neighborhood, and the affordability. Do we as residents have any say in more of our housing being destroyed for overpriced student housing and "luxury" apartments? My neighbors across the street bought the house next door to prevent more of this egregious development that has constantly been destroying our neighborhoods, our town, and the ability for the people who actually work here to enjoy it. It's absolutely disgusting.

I was kicked out of my last apartment, with one months notice for student housing and now it's happening again. How can this rezone be allowed and this destruction of our actual affordable housing? Especially when it's outside developers coming in. I had to beg my landlord to let us know what was possibly going on but we're still in the dark.

Absolutely no one that actually lives in this area wants this. Does the city plan on helping all of these people find new housing that's affordable and also safe? Most of these people don't have cars and live in this location for the walk ability, as well. If I, an architect with a second job can't even afford to live in a leaky basement apartment, how can we expect others to who actually work in hospitality and keep this city running?

Chad Kahana is my neighbor and suggested I reach out because we're all at such a loss. On top of it, our apartment building is about 100 years old and most likely the oldest original apartment building in our city. Families live in this neighborhood. People stay here because it's beautiful, affordable, and a wonderful location. We don't deserve to be pushed out of Fayetteville because some college can't control its student population and created a space for greedy developers from out of state to come in and tear apart our lives.

I appreciate any and all help we can get and any information. We've all been in a constant state of anxiety, depression, and stress over this. I'm going to have to either get a third job, or completely leave my company of ten years to move away because of this. We are humans and these are our homes. We should not be punished and left on the streets.

Thank you for your time,
Kathryn Cook

479-567-9355

Architect

Two term Historic District Commission

Wonsower, Donna

From: Kathryn Cook <kat.a.cook3@gmail.com>
Sent: Wednesday, April 17, 2024 1:18 PM
To: Bunch, Sarah; Bostick, Britin; Wonsower, Donna
Subject: Plan Number: RZN-2024-0018
Attachments: Picsart_24-04-17_13-16-37-314.jpg

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Is like to include this in the packet for the Planning Commission meeting on Monday, April 22.

I wanted to email a little more input and information on this possible destructive precedent that's about to be set for viable neighborhoods in Fayetteville. I hope you will each take the time to drive this area before voting through and allowing its demise.

We have a viable neighborhood full of multiple types of housing and people. We have renters, we owners. We have families, college students, young professionals, and elders. Some of our residents have lived here for decades and some just a few years. Myself, I've lived at 98 S Duncan for over 12 years. It's home. All of our tenants, except one, have been in our building over five years.

Everyone loves this neighborhood, the trees, the wildlife, the walkability, and most importantly the community. We sit on our stoop and porches and talk. We stand in each other's front yards and talk about how beautiful the lawn is. We take care of one another's pets, we help with groceries, we check on those who don't have family and community outside of our neighborhood.

This is a fully residential neighborhood that also still offers places to live that are actually affordable. If this rezone is allowed, our apartment will be sold and torn down (our homes) a long with everyone else who will lose their home. We have one of the oldest, if not the oldest, apartment building in Fayetteville. These are all healthy, viable places to live however, once we lose these, most of us will have to relocate out of Fayetteville (along with having to find new jobs elsewhere).

Tearing down this neighborhood does not bring community, does not bring better quality of life, it only brings overpriced student housing and overpriced apartments (about \$1,200/month for a micro studio) and it does not bring money to Fayetteville. It does not help the citizens.

This proposal does not adhere to the existing neighborhood context, it absolutely destroys it, just like The Cardinal and Atmosphere have done. Not one person that lives there wants this yet we have absolutely no say anymore.

Rezoning this sets the rest of the city up for more out of state developers to come in, kick everyone out of there housing that's actually still affordable, completely demolish everything in it's path, and building MORE student housing and luxury apartments. It only helps stuff the pockets of a just a few a hurts

everyone else. We should not continue to be punished because the University took the cap off of it's yearly acceptance.

Along with this, another developer is buying all of the houses on the opposite side of the street of Duncan (Putnam to the Cardinal) and is planning on tearing everything out along there for additional student housing. My neighbors across the street bought the house next to them to try to prevent any of this and yet it's happening. Their arms are being twisted and they will most likely sell because they don't think they're healthy can handle all of this construction. Along with this, these developers show up once a week harassing people about buying their homes.

If any of this is allowed, this neighborhood and community will be a thing of the past, yet again. It's truly the ideal Fayetteville neighborhood and should be kept and protected.

We need zoning that prevents viable housing from being destroyed and NEIGHBOR PROTECTION ACTS. We care about where we live and the people that love there. These are our Homes. We work day and night to make ends meet yet it's not enough. There are plenty of lots that have sat empty for years, and decades in this neighborhood that could actually be used for REAL INFILL. The argument that this is a way for them to create appropriate infill for this area (by tearing everything down) is just not correct. That is not infill. There is still land to make use and this does none of the things that were stated in the "Goals" of this project.

I'm also still confused about the city promoting "employment clusters" and "promoting economic values of employment clusters". This sounds like a way to drive out low income citizens from the actual city and confide us into an area that never sees tax money or better infrastructure. It sounds pretty disgusting, honestly. Especially when it's being used to take out housing that works so the rich can build luxury housing for their friends.

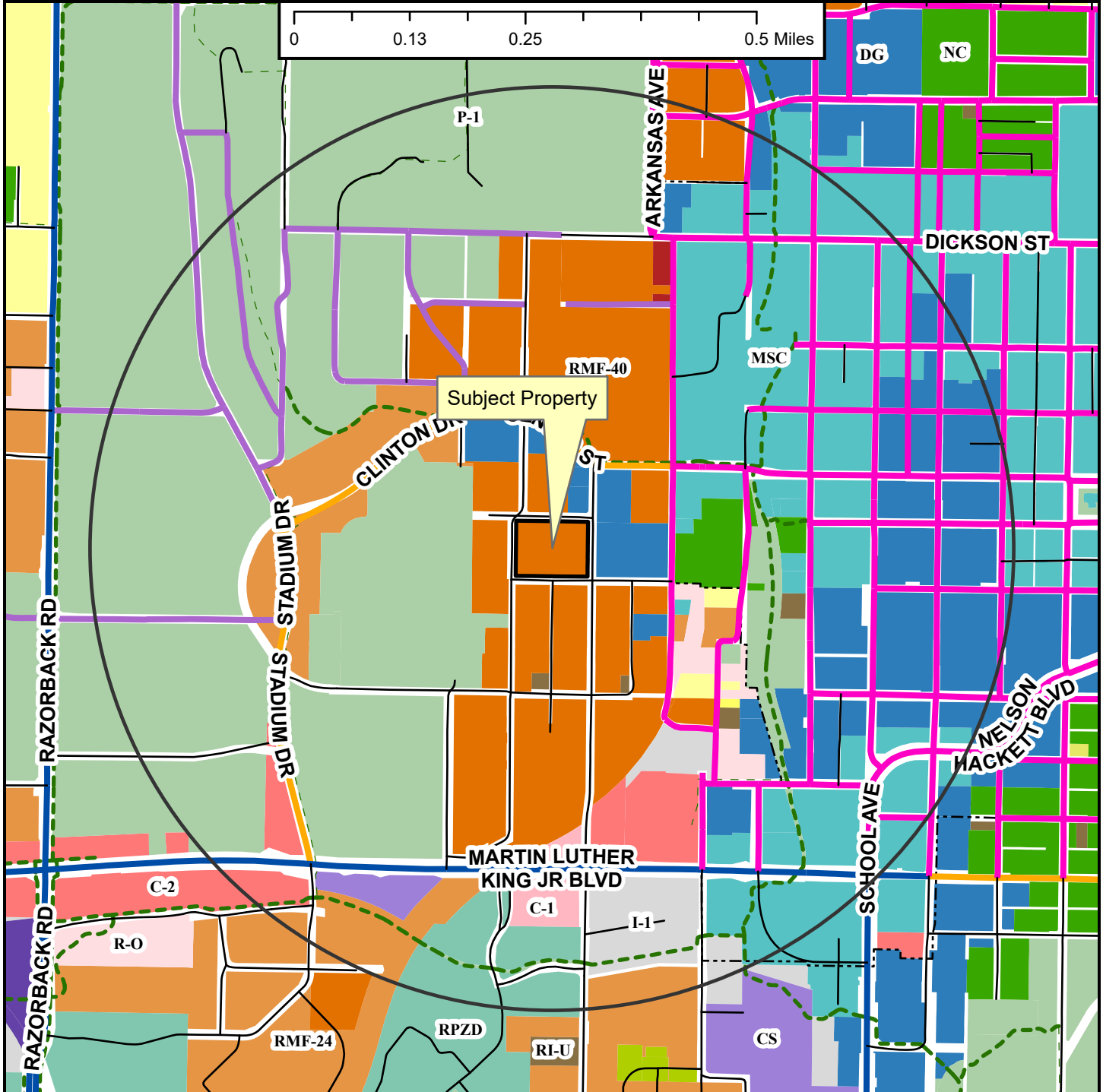
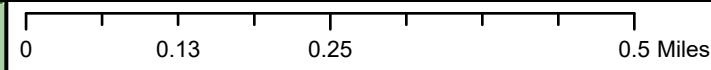
Along with this, my apartment building and another on our street, were conveniently left off of the mailing list for the information for any of this. I only found out because I spoke with a surveyor. Please truly consider what precedent you're setting and how much destruction, homeless, and forced existing of the community this will cause. See the whole picture.

I appreciate your time,
Kathryn Cook
AIA Architect

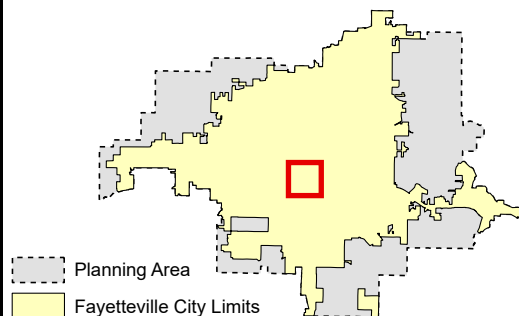
RZN-2024-0018

One Mile View

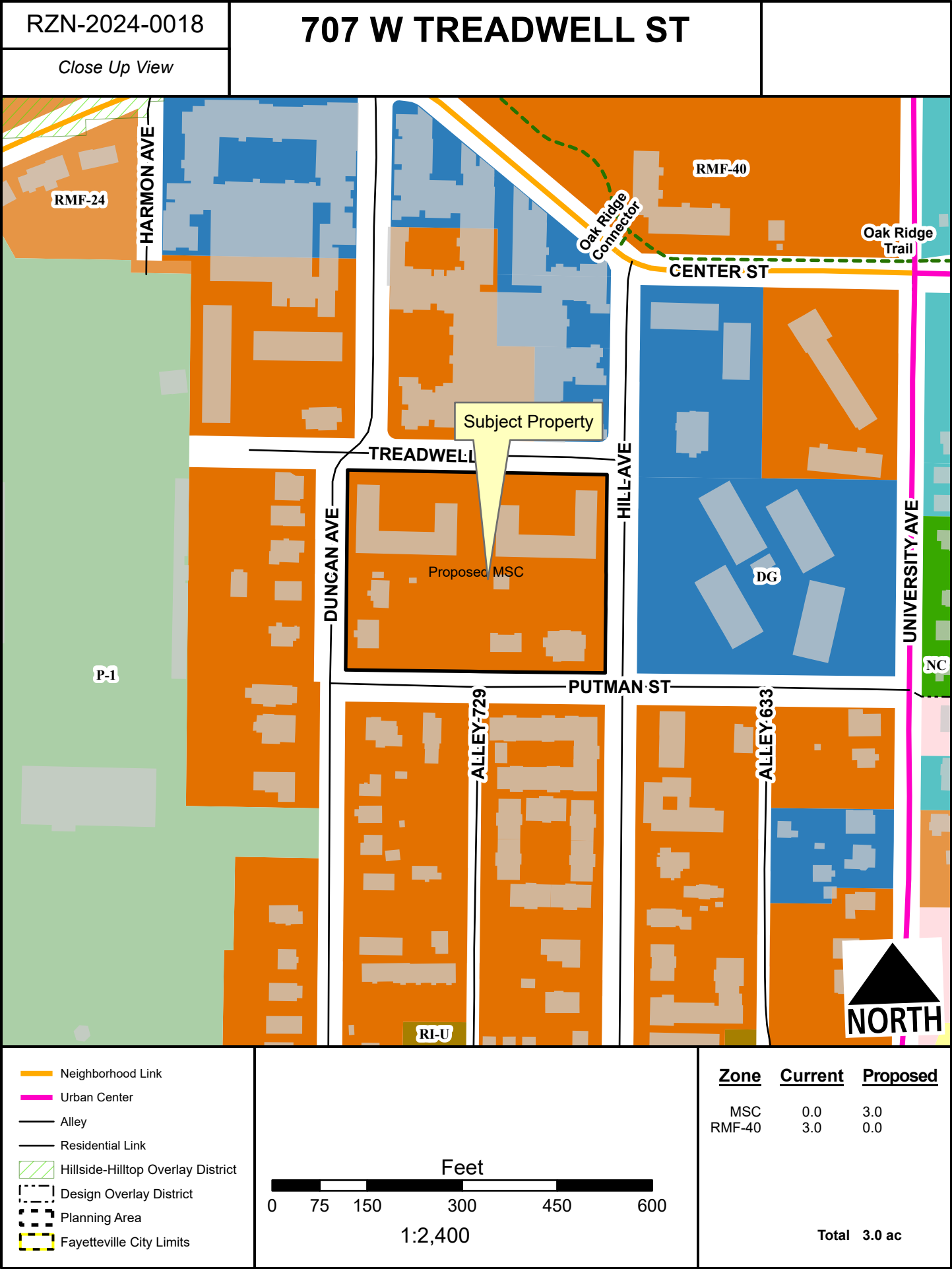
707 W TREADWELL ST

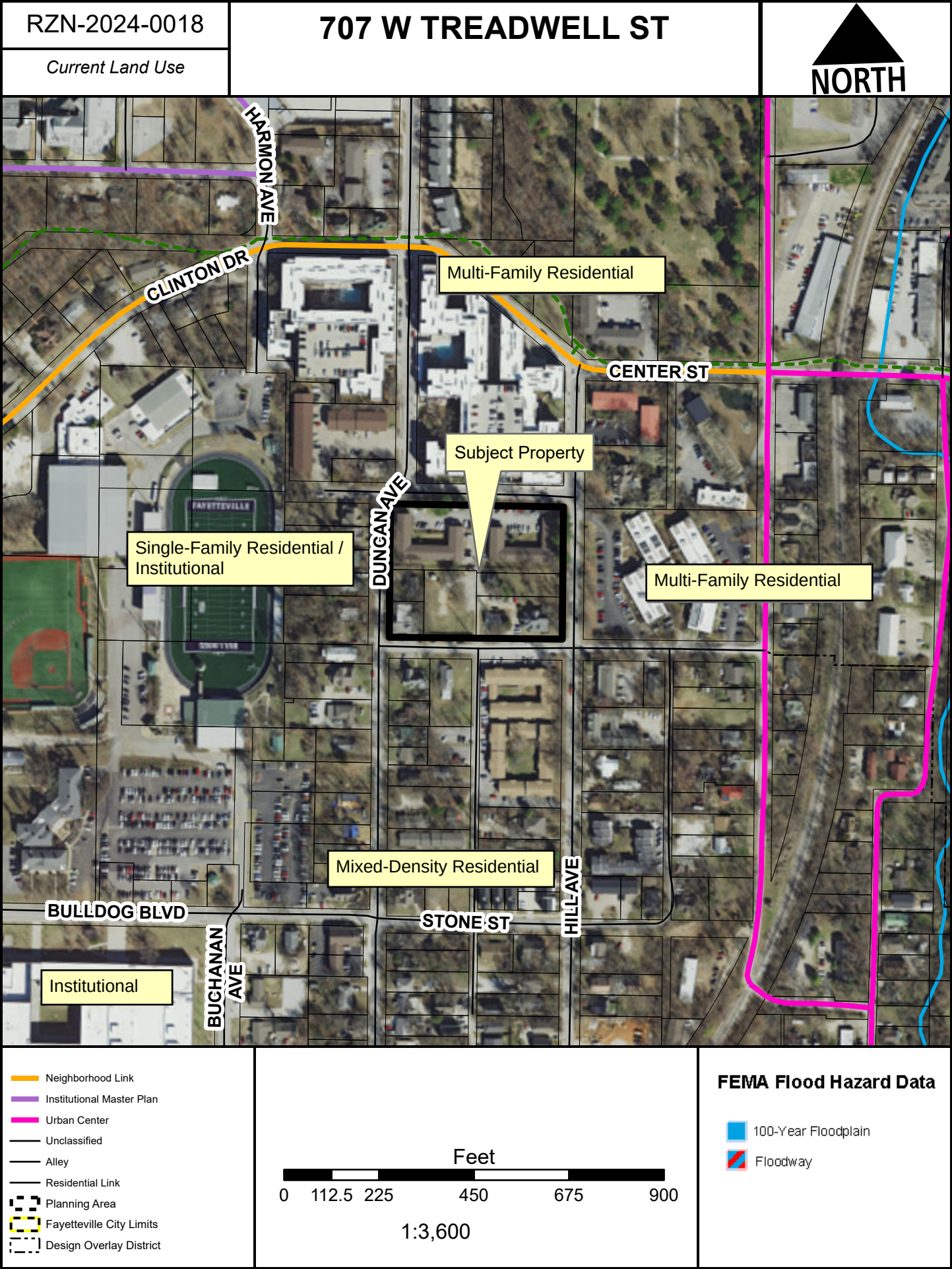


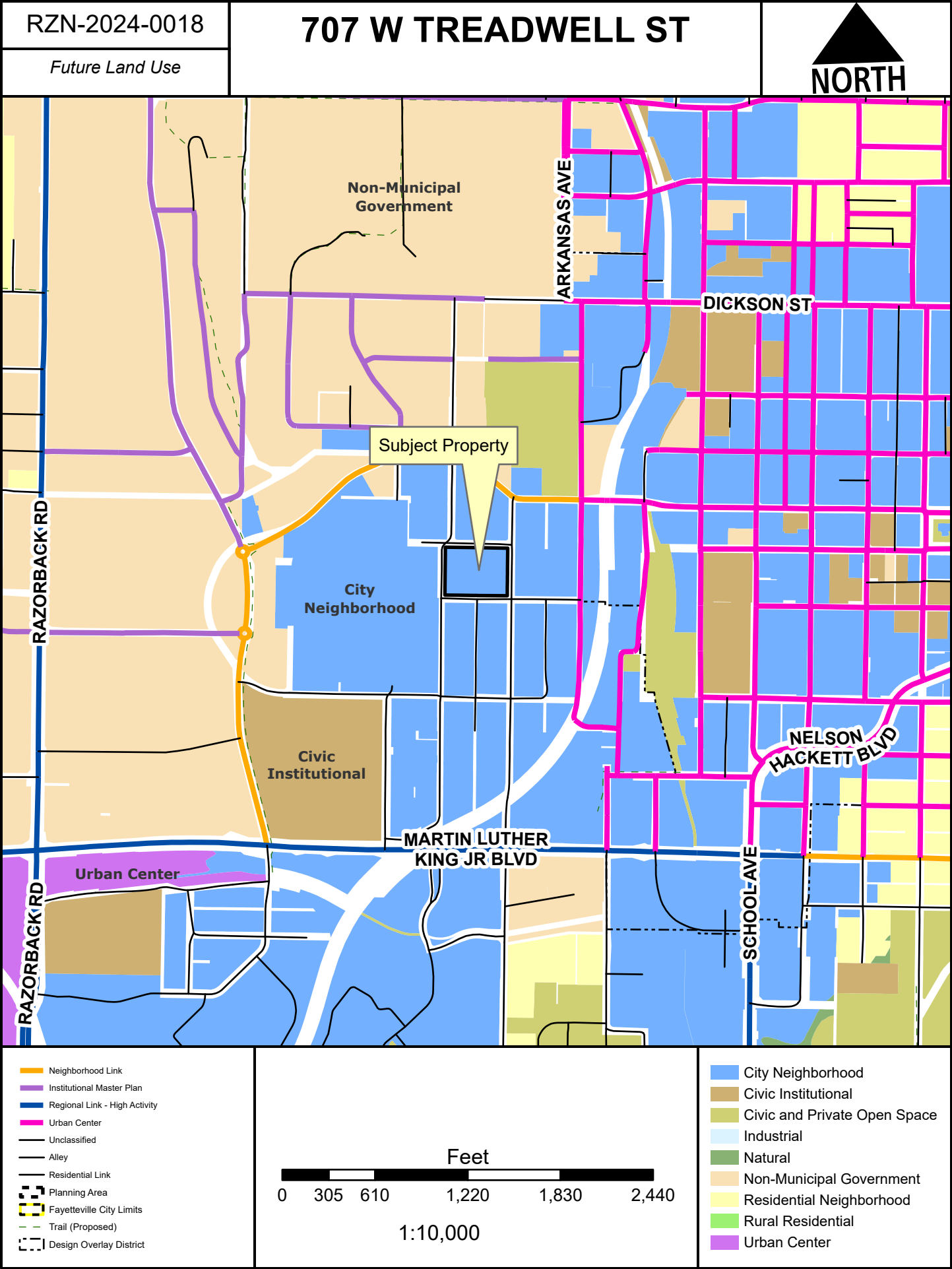
-  Neighborhood Link
-  Institutional Master Plan
-  Regional Link - High Activity
-  Urban Center
-  Unclassified
-  Alley
-  Residential Link
-  Shared-Use Paved Trail
-  Trail (Proposed)
-  Design Overlay District
-  Fayetteville City Limits
-  Planning Area



-
- Zoning**
- I-2 General Industrial
 - I-1 Heavy Commercial and Light Industrial
 - I-3 Medium Density Industrial
- RESIDENTIAL SINGLE-FAMILY**
- RS-G
 - RI-U
 - RI-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-1
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
- RESIDENTIAL MULTI-FAMILY**
- RMF-6
 - RMF-12
 - RMF-18
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
- EXTRACTION**
- E-1
- COMMERCIAL**
- Residential-Office
 - C-1
 - C-2
 - C-3
- FORM BASED DISTRICTS**
- Downtown Core
 - Urban Thoroughfare
 - Main Street Center
 - Downtown General
 - Community Services
 - Neighborhood Services
 - Neighborhood Conservation
- PLANNED ZONING DISTRICTS**
- Commercial, Industrial, Residential
- INSTITUTIONAL**
- P-1









MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU:
FROM: Kit Williams, City Attorney
SUBJECT: Ordinance to rezone a portion of the expired Springwoods PZD

RECOMMENDATION:

BACKGROUND:

On May 7, 2024, the City Council considered an ordinance to rezone various expired PZDs in Wards 1, 2, and 4. The item was held on the first reading. At the City Council's request, the City Attorney's office prepared an amended ordinance that removed the Park West and Springwoods PZDs which were to be considered by the Environmental Action Committee. On May 21, the City Council approved the revised ordinance rezoning only the Cliffside PZD, Westbrook Village Phase 2, and Paddock Road Subdivision.

DISCUSSION:

The City Attorney's Office has prepared a new ordinance rezoning 23.14 acres in the Springwoods PZD for the City Council's consideration to UT, Urban Thoroughfare and CS, Community Services.

BUDGET/STAFF IMPACT:

n/a

ATTACHMENTS: Ex A Springwoods - Less The Pines (#3), Ex B Springwoods - Less The Pines (#4), Agenda Request - 23.14 acres (#5), Environmental Action Committee Statement (#6), City Attorney Memo - Expired PZD's (#7), Climate Resilience Map (#8)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-149

Ordinance to rezone a portion of the expired Springwoods PZD

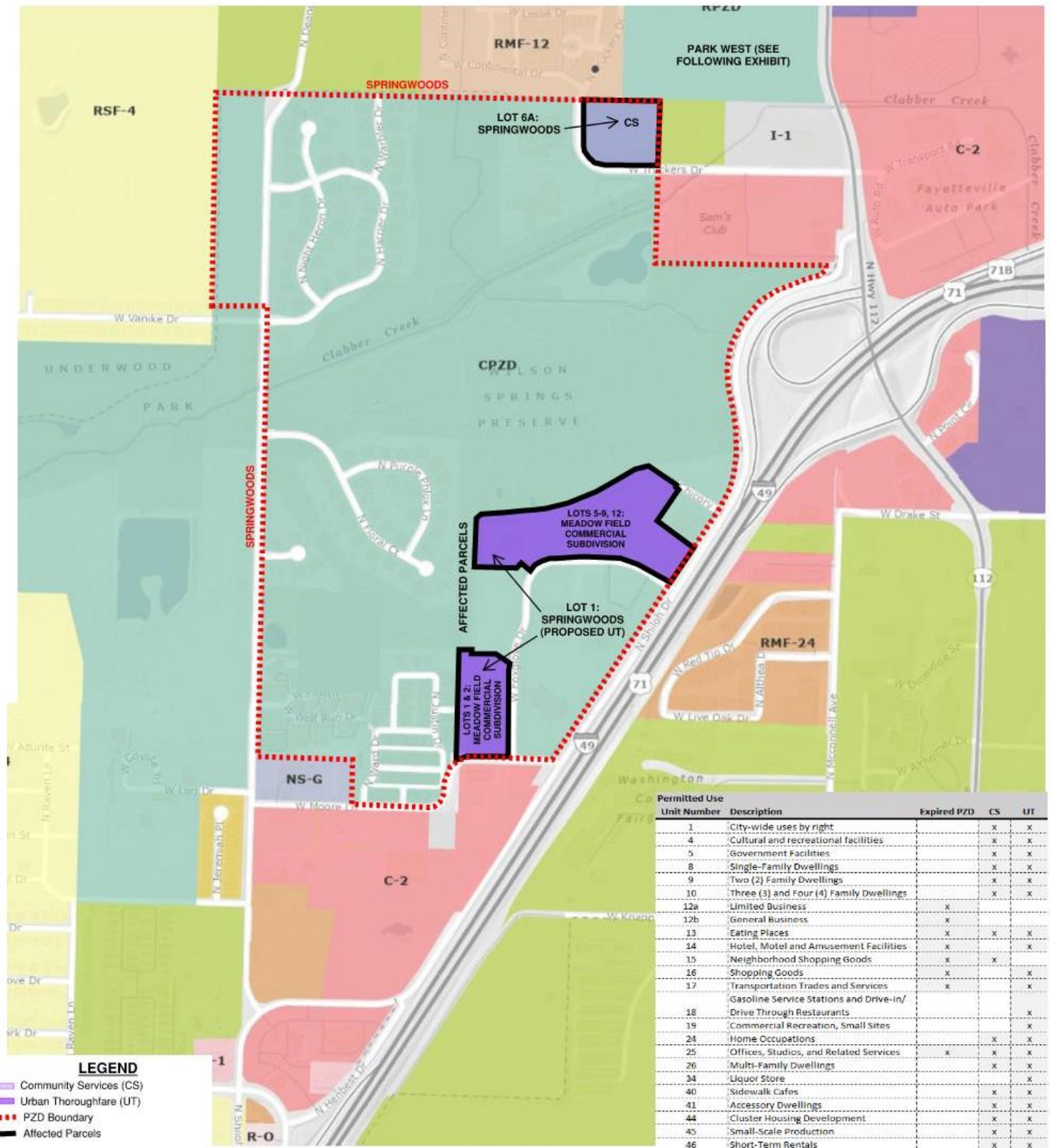
AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 23.14 ACRES IN THE SPRINGWOODS PZD IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from Planned Zoning District to UT, Urban Thoroughfare (23.7 acres) and CS, Community Services (15.71 acres)

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.

EXHIBIT A



SPRINGWOODS

EXHIBIT B



Proposed UT

**LOTS 1-2, 5-10, AND 12 OF THE FINAL PLAT OF MEADOW FIELD COMMERCIAL SUBDIVISION,
BEING A REPLAT OF SPRINGWOODS LOT #1, INCLUDING THE FOLLOWING PARCELS**

**MEADOW FIELD COMMERCIAL SUBDIVISION LOT 1 (PID 765-25745-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 2 (PID 765-25746-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 5 (PID 765-25749-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 6 (PID 765-25750-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 7 (PID 765-25751-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 8 (PID 765-25752-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 9 (PID 765-25753-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 10 (PID 765-25754-000)
MEADOW FIELD COMMERCIAL SUBDIVISION LOT 12 (PID 765-25756-000)**

RZN-2024-0011
EXHIBIT B



Proposed CS

Extended Legal

PT LOT 6

FURTHER DESCRIBED FROM 2022-3463 AS:

ALL OF LOT 6A OF SPRINGWOODS C-PZD AS RECORDED IN PLAT RECORD 2006-00029843, BEING LOCATED IN A PART OF THE NE OF THE NW AND IN A PART OF THE NW OF THE NE OF SECTION 33, TOWNSHIP 17 NORTH, RANGE 30 WEST IN FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: STARTING AT NE CORNER OF THE NE OF THE NW OF SECTION 33 FOR THE TRUE POINT OF BEGINNING; THENCE SOUTH 87°12 MINUTES 42 SECONDS EAST 247.42 FEET; THENCE SOUTH 02°27 MINUTES 35 SECONDS WEST 418.05 FEET; THENCE NORTH 87°54 MINUTES 20 SECONDS WEST 329.13 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 165.00 FEET, AN ARC LENGTH OF 260.23 FEET AND A CHORD OF NORTH 42°43 MINUTES 22 SECONDS WEST 234.09 FEET; THENCE NORTH 02°27 MINUTES 35 SECONDS EAST 257.55 FEET; THENCE SOUTH 87° 18 MINUTES 53 SECONDS EAST 247.76 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 4.649 ACRES, MORE OR LESS,

AGENDA REQUEST FORM

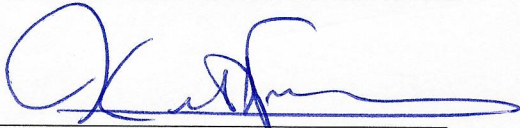
FOR: Council Meeting of June 4, 2024

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 23.14 ACRES IN THE SPRINGWOODS PZD IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES

APPROVED FOR AGENDA:



City Attorney Kit Williams

5-23-24

Date

Environmental Action Committee Statement

Agenda items C3 and C4 for the June 4th City Council Meeting

The City of Fayetteville's Environmental Action Committee (EAC) is aware that the City Council will be voting to re-establish zoning in 2 areas, Park West and Spring Woods, from their current un-zoned status to a combination of UT (Urban Thoroughfare) and CS (Community Services) for the former, and UT exclusively for the latter. This would allow for the densest and most varied possible development in the city. Given the environmental significance of these two parcels to the City's ongoing effort for climate resiliency as well as the importance of protecting Wilson Springs, we respectfully recommend and encourage that you instead consider rezoning Spring Woods and Park West to RA (Residential Agriculture) rather than UT (Urban Thoroughfare) for the following reasons.

The EAC has worked diligently for some time evaluating development of the Climate Action Plan (CAP), and the Climate Resilience Mapping Tool which was developed as an outcome of crafting the CAP itself. This document and associated software tool have succeeded in the goal of objectively describing parcels of land in the city in relation to how much (or little) they can support the long-term resiliency to withstand predicted changes in the climate. The Climate Resilience Map is a groundbreaking scientific tool to assist in making decisions for our rapidly growing city. City staff and Olsson engineering have done an excellent job of creating this tool which can help all involved to make better informed decisions associated with future development. It is now possible to look at any parcel of land in the city to reference it's ranking on this interactive mapping tool from least to most impactful on climate resiliency from development.

Given what we have learned from the Climate Resiliency Map scoring data, the EAC would advocate for a reconsideration in zoning of the two parcels in question. The Park West and Springwoods parcels have identifiable ecosystem services and ecological resilience attributes that make them valuable for consideration and protection. We would like to draw your attention to the fact that only a comparatively small number of parcels in the city exhibit such a significant score. Significant scores indicate parcels are ecologically significant and should be protected due to the ecosystem services they provide. The ecosystem services that the 2 un-zoned areas support include, but are not limited to, (1) supporting the health of Wilson Springs and Clabber Creek and their associated ecosystems and (2) absorption and remediation of rainwater. This is critical as climate change continues to contribute to greater and more frequent flooding events. Even as the city moves toward adoption of a new tax for storm-water services, the Council needs to be ever vigilant that future zoning changes and development will not exacerbate flooding issues within the city.

While neither the Climate Action Plan or the Climate Resilience Mapping Tool have been discussed or adopted by the City Council at this time, both are coming forward for consideration later this summer. The goal, of course, is to keep Fayetteville as healthy and livable by evaluating data gathered through numerous methods, and organizing that data to ensure well informed solutions are always available to planners and policy makers.

The EAC is cognizant of the fact that high density urban thoroughfares are important to the long-term health of a city. As such, we will soon be taking a detailed look into the proposed College Avenue changes for one. At first glance, we noticed that most of the parcels in that area score very low on the Climate Resiliency Map. This suggests College Avenue corridor might be an example of a more appropriate site for high density development rather than endorsing the highest density zoning on particularly ecologically valuable parcels which could send a negative signal to our residents as to the future of environmental protection in our vibrant, fast-growing city.

Jeff Pummill
Environmental Action Committee Chair



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Senior Assistant City Attorney

Hannah Hungate
Assistant City Attorney

Stacy Barnes
Paralegal

TO: **Mayor**
City Council

CC: **Susan Norton**, Chief of Staff
Jonathan Curth, Development Services Director
Jesse Masters, Planning Director

FROM: **Kit Williams**, City Attorney

DATE: **June 10, 2024**

RE: Rezoning Expired Planned Zoning Districts

I was asked during the last City Council Meeting whether the City could be facing financial danger if it failed to rezone the two proposed rezonings of the expired Planned Zoning Districts that were recommended by Planning Staff and the Planning Commission, but not yet decided by the City Council. I did caution the City Council that if it refused to accept the recommendations of both Planning Staff and the Planning Commission to rezone these parcels to a comparable zoning district as these parcels enjoyed in their PZDs, the city could face serious problems. However, I do not think that I was as clear enough about my concerns as I should have been when discussing possible litigation over the millions of dollars of development and land values the City would be facing.

The major legal problem would be in refusing to approve the zoning rights expressly approved by the Fayetteville City Council when these Planned Zoning Districts were enacted by ordinance. Those zoning rights provide explicit development rights for projects meeting the zoning criteria agreed to and enacted into the Planned Zoning District ordinance.

The head of the Planning Department has been explicitly empowered by the *Unified Development Code* to administer and interpret most of the *UDC* including the Zoning and Development Chapters. I believe this is good policy as Planning deals with zoning and development issues all day every day. Initially after the development portion of the old PZDs expired through inaction, Planning still allowed some projects that matched the zoning requirements of the PZDs to be developed. I believe that this was a good and even necessary decision. More recently, Planning has sought to require

a new zoning district be enacted by the City Council for new development within the undeveloped portion of expired PZDs. As long as the City Council follows the Planning Department's recommendations for the two expired Planned Zoning Districts now being considered, no protected property rights will have been adversely effected. Rezoning this property into established zoning districts will make both their development and future uses clearer and easier to administer for both the owners and staff.

Is it safe for the Fayetteville City Council to refuse to agree to rezone these portions of old PZDs as recommended by Planning Staff and the Planning Commission? I must expressly and unequivocally say: "No."

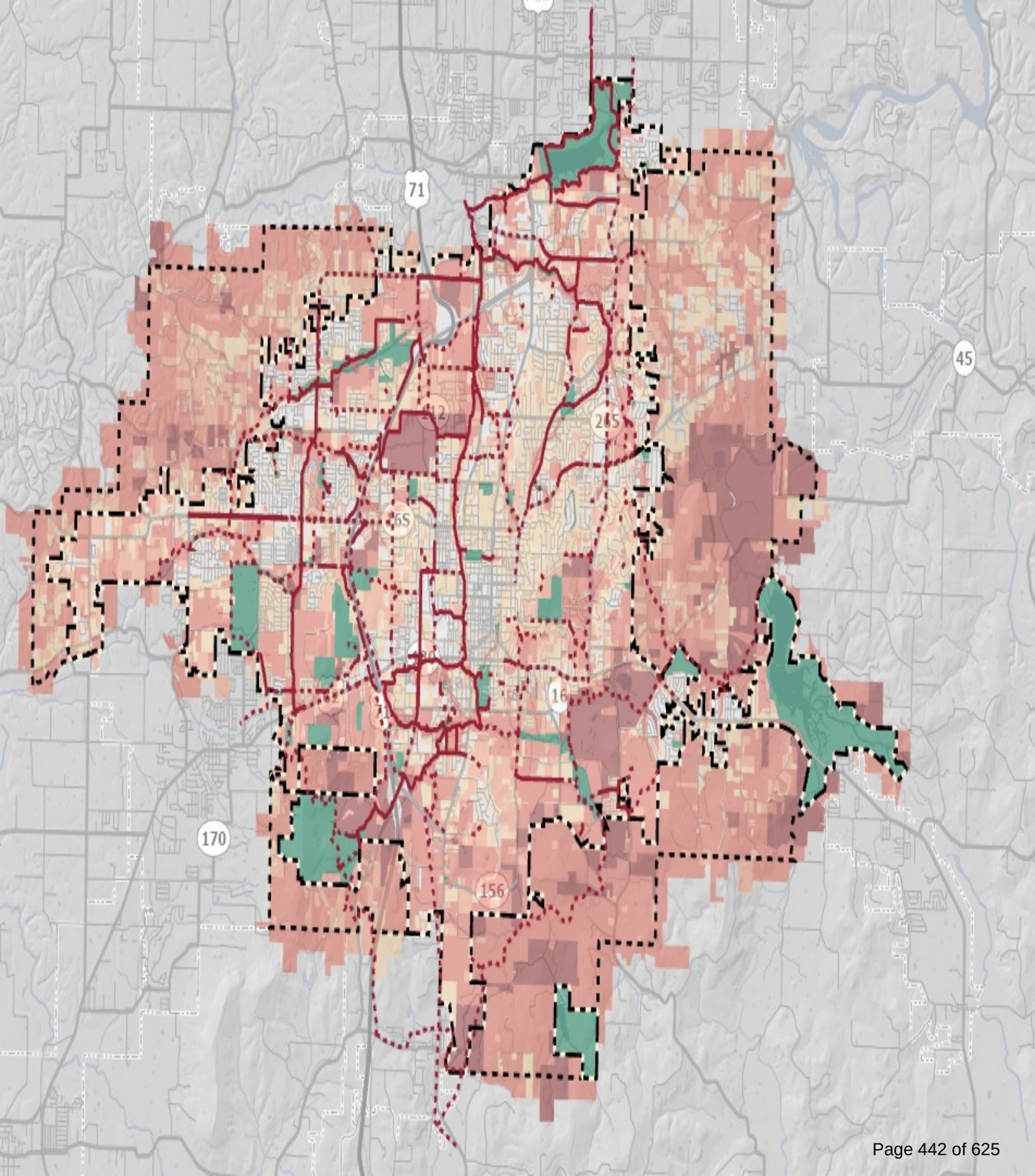
From the very beginning of Zoning in Arkansas in the 1940s or 50s, state law has referred to the **Zoning ordinance**, A.S.A. 1947 Section 19-2829 (which is now A.C.A. Section 14-56-416). As you know, ordinances are required for permanent regulations or decisions as compared to resolutions which are for one time approvals, purchases, approving most contracts, stating the intention of the Council, etc. Zoning ordinances are generally considered permanent and in force until specifically repealed or amended by the City Council.

Indeed, the statutory provision used by the Council for every one of its rezonings is A.C.A. Section 14-56-423 which requires an approved individual amendment to change or discontinue an existing zoning ordinance by majority vote of the Fayetteville City Council. "After adoption of . . . ordinances . . . , no ... discontinuance of the . . . ordinances...may be made except...by a majority vote of the city council." It thus does not appear that a zoning ordinance may be discontinued in its effect due only to passage of time.

CONCLUSION

The Fayetteville City Council's action to pass the rezoning ordinances as recommended by both the Planning Staff and Planning Commission is certainly the correct legal decision in this case. Such action by the City Council will ensure that the City of Fayetteville will face no legal liability that could occur if these proposed rezonings are not enacted.

The current Planned Zoning District code section enacted by the Council into the UDC many years ago is a proper zoning district that, like every other zoning district, will remain in force and effect unless and until the Council passes a rezoning ordinance. Therefore, more recent PZDs do not pose the issues of the earlier PZDs that combined both zoning and development rights in a single ordinance.





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU:
FROM: Kit Williams, City Attorney
SUBJECT: Ordinance to rezone 39.41 acres in the expired Park West PZD

RECOMMENDATION:

BACKGROUND:

On May 7, 2024, the City Council considered an ordinance to rezone various expired PZDs in Wards 1, 2, and 4. The item was held on the first reading. At the City Council's request, the City Attorney's office prepared an amended ordinance that removed the Park West and Springwoods PZDs which were to be considered by the Environmental Action Committee. On May 21, the City Council approved the revised ordinance rezoning only the Cliffside PZD, Westbrook Village Phase 2, and Paddock Road Subdivision.

DISCUSSION:

The City Attorney's Office has prepared a new ordinance rezoning the Park West PZD for the City Council's consideration.

BUDGET/STAFF IMPACT:

n/a

ATTACHMENTS: Ex A Park West (#3), Ex B Park West (#4), Agenda Request - Park West PZD (#5), Environmental Action Committee Statement (#6), City Attorney Memo - Expired PZD's (#7), Climate Resilience Map (#8)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-147

Ordinance to rezone 39.41 acres in the expired Park West PZD

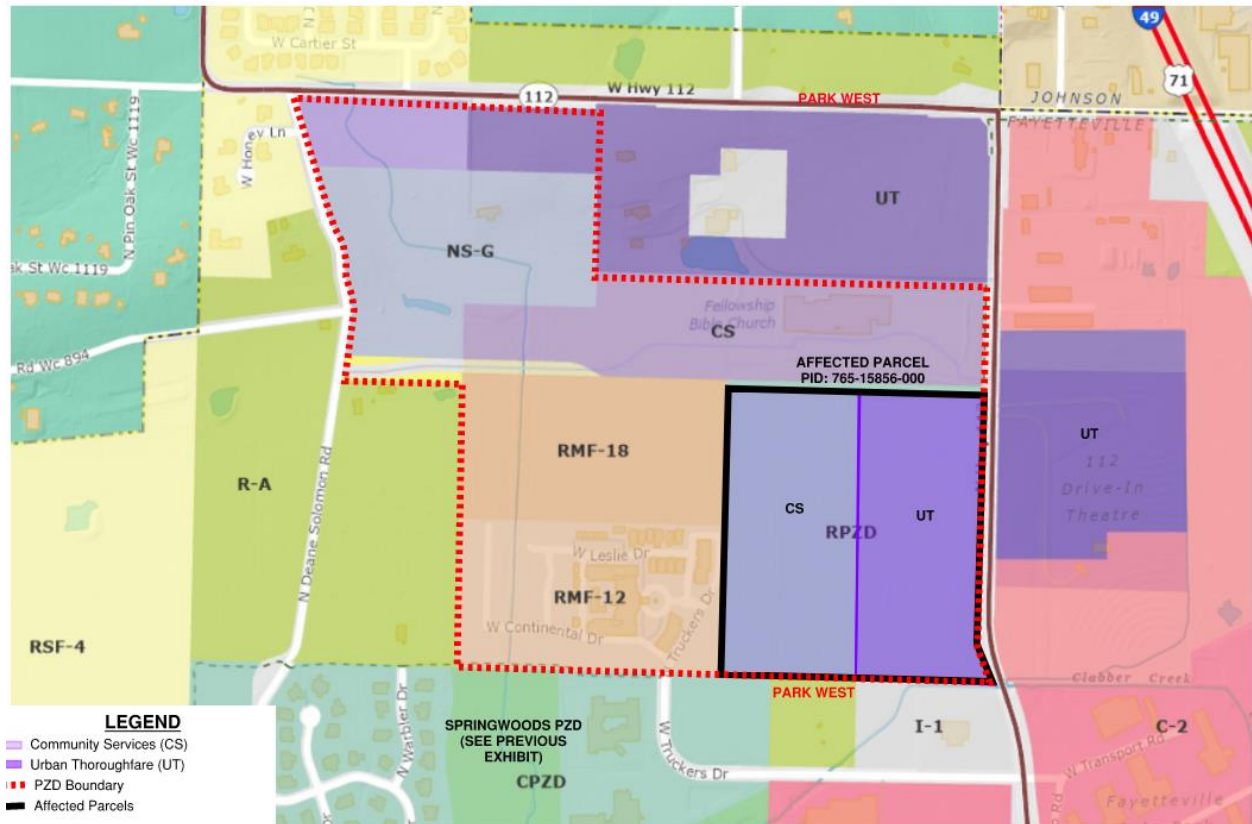
AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 39.41 ACRES IN THE PARK WEST PZD ON NORTH HIGHWAY 112 IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from Planned Zoning District to UT, Urban Thoroughfare (23.7 acres) and CS, Community Services (15.71 acres)

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.

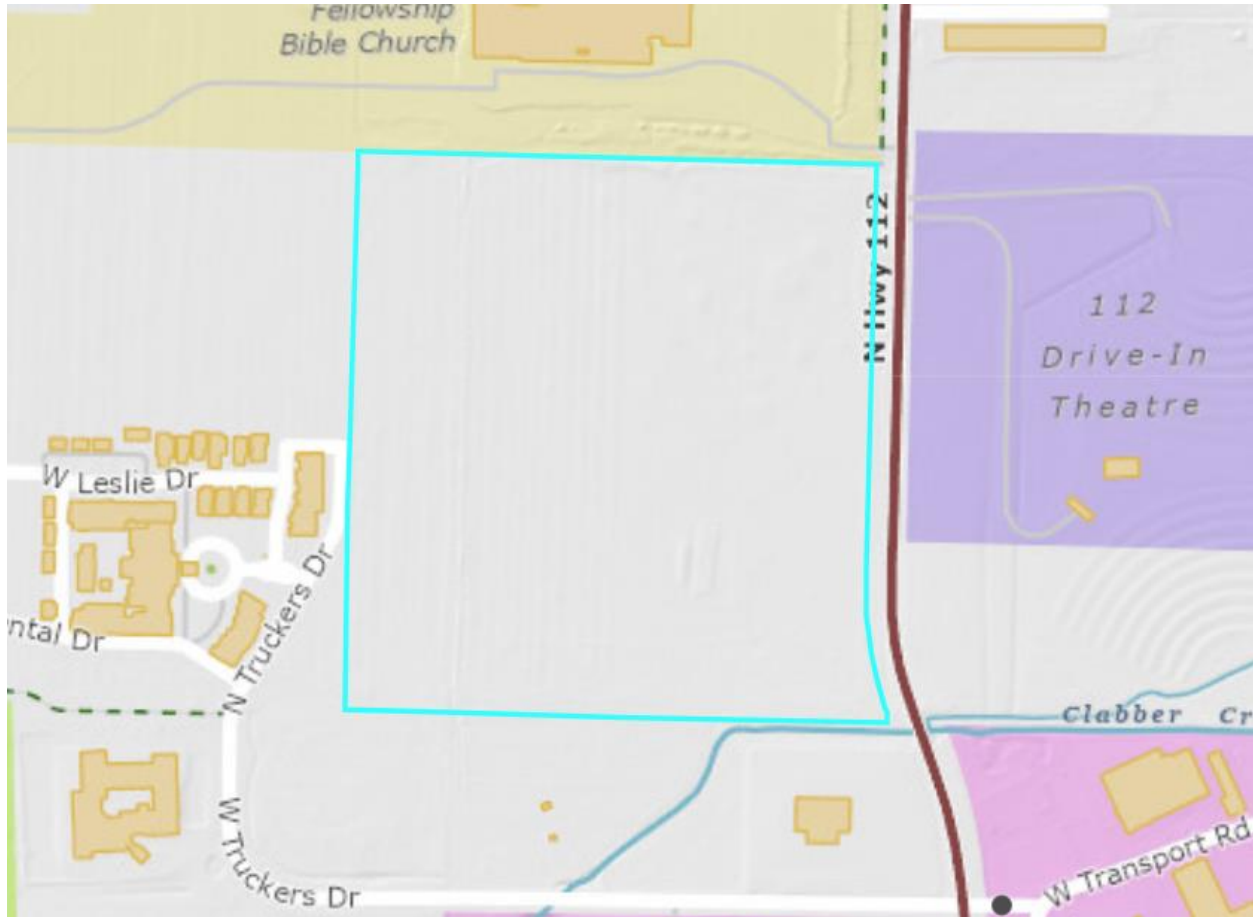
EXHIBIT A



PARK WEST

EXHIBIT B

RZN-2024-0011 LEGAL DESCRIPTIONS



Parent Tract: (Assessor's Page)

SW SE & SE SW 39.43 FURTHER DESCRIBED FROM 2017-7010 AS: PART OF THE WEST HALF OF THE SOUTHEAST QUARTER, ALL IN SECTION TWENTY-EIGHT (28), TOWNSHIP SEVENTEEN (17) NORTH, RANGE THIRTY (30) WEST OF THE FIFTH PRINCIPAL MERIDIAN, WASHINGTON COUNTY ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NE 1/4 OF THE SW 1/4 OF SAID SECTION 28 BEING A FOUND COTTON PICKER SPINDLE IN ASPHALT ROADWAY; THENCE ALONG THE WEST LINE OF SAID NE 1/4 OF THE SW 1/4, S02°34'52"W A DISTANCE OF 1283.11 FEET TO A FOUND IRON PIN WITH CAP "PLS 1439"; THENCE LEAVING SAID WEST LINE, S87°19'58"E A DISTANCE OF 1315.10 FEET TO THE POINT OF BEGINNING, SAID POINT BEING A SET IRON PIN WITH CAP "PLS 1156"; THENCE S87°19'58"E A DISTANCE OF 1266.91 FEET TO THE WESTERLY RIGHT OF WAY LINE OF HIGHWAY 112 THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING EIGHT (8) CALLS, S02°43'18"W A DISTANCE OF 978.38 FEET TO A POINT; THENCE S02°02'26"W A DISTANCE OF 63.14 FEET TO A POINT; THENCE S00°11'50"W A DISTANCE OF 51.97 FEET TO A POINT; THENCE S03°04'07"E A DISTANCE OF 40.08 FEET TO A POINT; THENCE S07°04'04"E A DISTANCE OF 55.68 FEET TO A POINT; THENCE S11°50'44"E A DISTANCE OF 58.74 FEET TO A POINT; THENCE S15°34'53"E A DISTANCE OF 71.32 FEET TO A POINT; THENCE S18°13'53"E A DISTANCE OF 15.95 FEET TO A POINT; THENCE LEAVING SAID RIGHT OF WAY, S02°32'54"W A DISTANCE OF 26.08 FEET TO A FOUND 3 INCH ALUMINUM CAP AT THE SOUTHEAST CORNER OF THE SW 1/4 OF THE SE 1/4 OF SAID SECTION 28; THENCE ALONG THE SOUTH LINE OF SAID SW 1/4 OF THE SE 1/4, N87°08'52"W A DISTANCE OF 1322.12 FEET TO A FOUND IRON PIN WITH CAP "PLS 1439", BEING THE SOUTH QUARTER CORNER OF SAID SECTION 28; THENCE LEAVING SAID SOUTH LINE, N02°32'22"E A DISTANCE OF 1349.51 FEET TO THE POINT OF BEGINNING. SAID TRACT OR PARCEL OF LAND CONTAINING 39.43 ACRES (1,717,256 SQUARE FEET), MORE OR LESS RECORDS OF WASHINGTON COUNTY, ARKANSAS.

EXHIBIT B

Westerly portion Tract 1 PLA 2017-3176 (Proposed CS Zoning)

A portion of the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section Twenty-Eight (28), Township Seventeen (17) North, Range Thirty (30) West, Fifth Principal Meridian, Washington County, Arkansas being more particularly described as follows:

Commencing at the Southeast corner of said Forty (40) acre tract;
thence North 87°08'52" West 819.76 feet to the Point of Beginning;
thence North 87°09'40" West 504.68 feet to a point;
thence North 02°32'22" East 1349.51 feet to a point;
thence South 87°19'58" East 508.97 feet to a point;
thence South 02°43'18" West 1351.02 feet to the point of beginning,
having an area of 15.710 acres, more or less.

Easterly portion Tract 1 PLA 2017-3176 (Proposed UT)

A portion of the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section Twenty-Eight (28), Township Seventeen (17) North, Range Thirty (30) West, Fifth Principal Meridian, Washington County, Arkansas being more particularly described as follows:

Beginning at the Southeast corner of said Forty (40) acre tract;
thence North 87°08'52" West 819.76 feet to a point;
thence North 02°43'18" East 1351.02 feet to a point;
thence South 87°19'58" East 757.94 feet to a point;
thence South 02°43'18" West 978.38 feet to a point;
thence South 02°02'26" West 63.14 feet to a point;
thence South 00°11'50" West 51.97 feet to a point;
thence South 03°04'07" East 40.08 feet to a point;
thence South 07°04'04" East 55.68 feet to a point;
thence South 11°50'44" East 58.74 feet to a point;
thence South 15°34'53" East 71.32 feet to a point;
thence South 18°13'53" East 15.95 feet to a point;
thence South 02°32'54" East 26.08 feet to the point of beginning,
having an area of 23.704 acres, more or less.

AGENDA REQUEST FORM

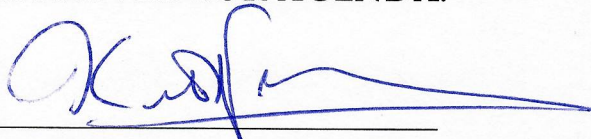
FOR: Council Meeting of June 4, 2024

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-0011 FOR 39.41 ACRES IN THE PARK WEST PZD ON NORTH HIGHWAY 112 IN WARD 2 FROM PLANNED ZONING DISTRICT TO UT, URBAN THOROUGHFARE AND CS, COMMUNITY SERVICES

APPROVED FOR AGENDA:



City Attorney Kit Williams

May 23, 2024

Date

Environmental Action Committee Statement

Agenda items C3 and C4 for the June 4th City Council Meeting

The City of Fayetteville's Environmental Action Committee (EAC) is aware that the City Council will be voting to re-establish zoning in 2 areas, Park West and Spring Woods, from their current un-zoned status to a combination of UT (Urban Thoroughfare) and CS (Community Services) for the former, and UT exclusively for the latter. This would allow for the densest and most varied possible development in the city. Given the environmental significance of these two parcels to the City's ongoing effort for climate resiliency as well as the importance of protecting Wilson Springs, we respectfully recommend and encourage that you instead consider rezoning Spring Woods and Park West to RA (Residential Agriculture) rather than UT (Urban Thoroughfare) for the following reasons.

The EAC has worked diligently for some time evaluating development of the Climate Action Plan (CAP), and the Climate Resilience Mapping Tool which was developed as an outcome of crafting the CAP itself. This document and associated software tool have succeeded in the goal of objectively describing parcels of land in the city in relation to how much (or little) they can support the long-term resiliency to withstand predicted changes in the climate. The Climate Resilience Map is a groundbreaking scientific tool to assist in making decisions for our rapidly growing city. City staff and Olsson engineering have done an excellent job of creating this tool which can help all involved to make better informed decisions associated with future development. It is now possible to look at any parcel of land in the city to reference it's ranking on this interactive mapping tool from least to most impactful on climate resiliency from development.

Given what we have learned from the Climate Resiliency Map scoring data, the EAC would advocate for a reconsideration in zoning of the two parcels in question. The Park West and Springwoods parcels have identifiable ecosystem services and ecological resilience attributes that make them valuable for consideration and protection. We would like to draw your attention to the fact that only a comparatively small number of parcels in the city exhibit such a significant score. Significant scores indicate parcels are ecologically significant and should be protected due to the ecosystem services they provide. The ecosystem services that the 2 un-zoned areas support include, but are not limited to, (1) supporting the health of Wilson Springs and Clabber Creek and their associated ecosystems and (2) absorption and remediation of rainwater. This is critical as climate change continues to contribute to greater and more frequent flooding events. Even as the city moves toward adoption of a new tax for storm-water services, the Council needs to be ever vigilant that future zoning changes and development will not exacerbate flooding issues within the city.

While neither the Climate Action Plan or the Climate Resilience Mapping Tool have been discussed or adopted by the City Council at this time, both are coming forward for consideration later this summer. The goal, of course, is to keep Fayetteville as healthy and livable by evaluating data gathered through numerous methods, and organizing that data to ensure well informed solutions are always available to planners and policy makers.

The EAC is cognizant of the fact that high density urban thoroughfares are important to the long-term health of a city. As such, we will soon be taking a detailed look into the proposed College Avenue changes for one. At first glance, we noticed that most of the parcels in that area score very low on the Climate Resiliency Map. This suggests College Avenue corridor might be an example of a more appropriate site for high density development rather than endorsing the highest density zoning on particularly ecologically valuable parcels which could send a negative signal to our residents as to the future of environmental protection in our vibrant, fast-growing city.

Jeff Pummill
Environmental Action Committee Chair



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Senior Assistant City Attorney

Hannah Hungate
Assistant City Attorney

Stacy Barnes
Paralegal

TO: **Mayor**
City Council

CC: **Susan Norton**, Chief of Staff
Jonathan Curth, Development Services Director
Jesse Masters, Planning Director

FROM: **Kit Williams**, City Attorney

DATE: **June 10, 2024**

RE: Rezoning Expired Planned Zoning Districts

I was asked during the last City Council Meeting whether the City could be facing financial danger if it failed to rezone the two proposed rezonings of the expired Planned Zoning Districts that were recommended by Planning Staff and the Planning Commission, but not yet decided by the City Council. I did caution the City Council that if it refused to accept the recommendations of both Planning Staff and the Planning Commission to rezone these parcels to a comparable zoning district as these parcels enjoyed in their PZDs, the city could face serious problems. However, I do not think that I was as clear enough about my concerns as I should have been when discussing possible litigation over the millions of dollars of development and land values the City would be facing.

The major legal problem would be in refusing to approve the zoning rights expressly approved by the Fayetteville City Council when these Planned Zoning Districts were enacted by ordinance. Those zoning rights provide explicit development rights for projects meeting the zoning criteria agreed to and enacted into the Planned Zoning District ordinance.

The head of the Planning Department has been explicitly empowered by the *Unified Development Code* to administer and interpret most of the *UDC* including the Zoning and Development Chapters. I believe this is good policy as Planning deals with zoning and development issues all day every day. Initially after the development portion of the old PZDs expired through inaction, Planning still allowed some projects that matched the zoning requirements of the PZDs to be developed. I believe that this was a good and even necessary decision. More recently, Planning has sought to require

a new zoning district be enacted by the City Council for new development within the undeveloped portion of expired PZDs. As long as the City Council follows the Planning Department's recommendations for the two expired Planned Zoning Districts now being considered, no protected property rights will have been adversely effected. Rezoning this property into established zoning districts will make both their development and future uses clearer and easier to administer for both the owners and staff.

Is it safe for the Fayetteville City Council to refuse to agree to rezone these portions of old PZDs as recommended by Planning Staff and the Planning Commission? I must expressly and unequivocally say: "No."

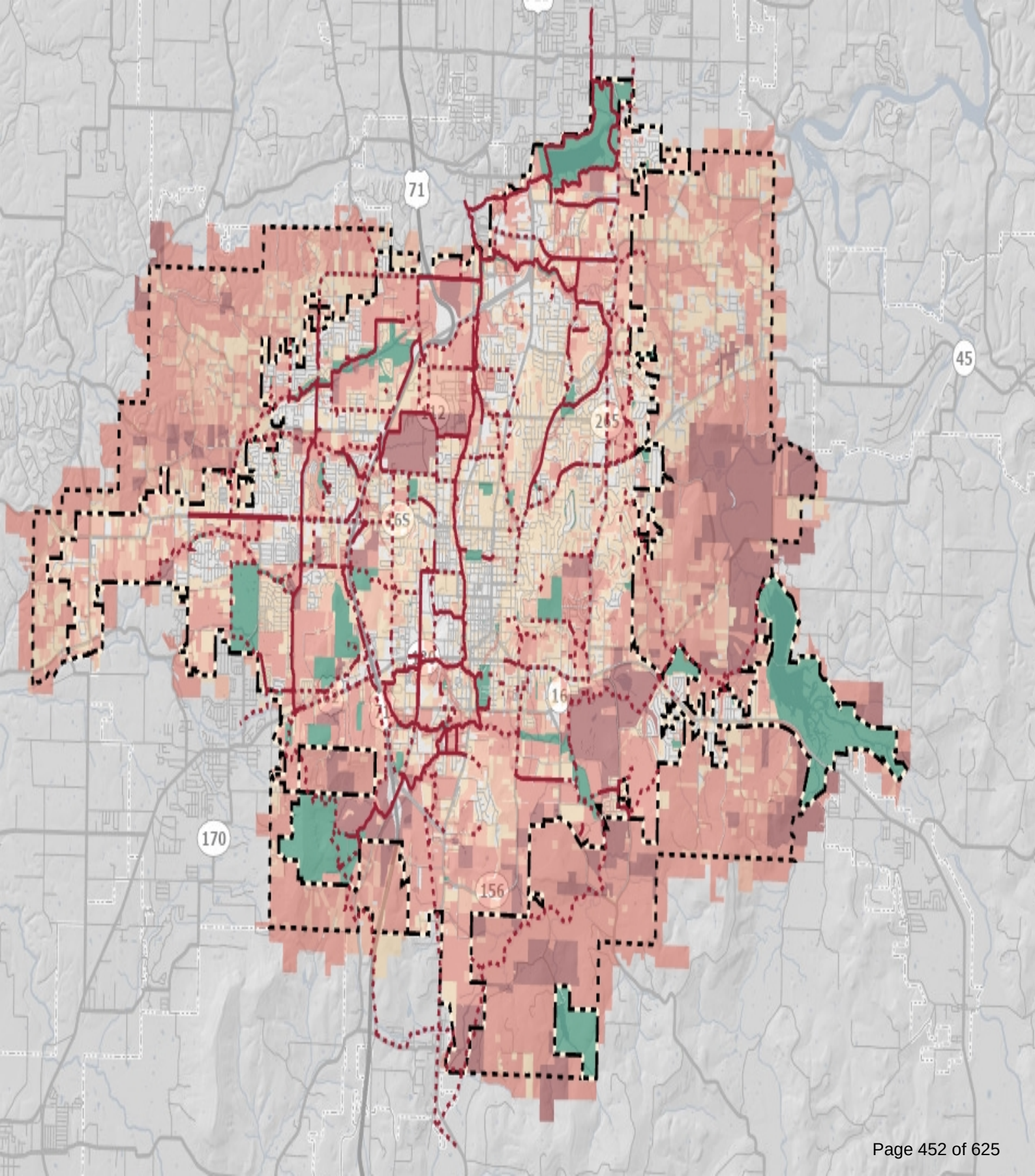
From the very beginning of Zoning in Arkansas in the 1940s or 50s, state law has referred to the **Zoning ordinance**, A.S.A. 1947 Section 19-2829 (which is now A.C.A. Section 14-56-416). As you know, ordinances are required for permanent regulations or decisions as compared to resolutions which are for one time approvals, purchases, approving most contracts, stating the intention of the Council, etc. Zoning ordinances are generally considered permanent and in force until specifically repealed or amended by the City Council.

Indeed, the statutory provision used by the Council for every one of its rezonings is A.C.A. Section 14-56-423 which requires an approved individual amendment to change or discontinue an existing zoning ordinance by majority vote of the Fayetteville City Council. "After adoption of . . . ordinances . . . , no ... discontinuance of the . . . ordinances...may be made except...by a majority vote of the city council." It thus does not appear that a zoning ordinance may be discontinued in its effect due only to passage of time.

CONCLUSION

The Fayetteville City Council's action to pass the rezoning ordinances as recommended by both the Planning Staff and Planning Commission is certainly the correct legal decision in this case. Such action by the City Council will ensure that the City of Fayetteville will face no legal liability that could occur if these proposed rezonings are not enacted.

The current Planned Zoning District code section enacted by the Council into the UDC many years ago is a proper zoning district that, like every other zoning district, will remain in force and effect unless and until the Council passes a rezoning ordinance. Therefore, more recent PZDs do not pose the issues of the earlier PZDs that combined both zoning and development rights in a single ordinance.





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council
THRU: Paul Becker, Chief Financial Officer
FROM: Steven Dotson, Internal Auditor
SUBJECT: **Additional funding for ARPA Childcare Assistance Program**

RECOMMENDATION:

Additional funding for ARPA Childcare Assistance Program

BACKGROUND:

The City of Fayetteville was awarded \$17.9 million in American Rescue Plan Act funding to assist in responding to the negative effects of the COVID-19 pandemic. Beginning in 2021, the City established a number of projects to address the effects of the COVID-19 pandemic throughout the City. Some of the major ARPA projects included assistance to nonprofit organizations, vaccine incentives, workforce training development programs, floodplain conservation, funding to provide new ambulances to the regional ambulance authority, programs to address housing instability in Fayetteville. In 2022 and 2023, the City Council approved a total of \$2,000,000 to fund a childcare assistance program. This has proven to be one of the most popular ARPA programs that the City has operated, and the program is currently running low on funding. Although City funds generally could not be used for this purpose, the American Rescue Plan Act regulations allow this as a qualified use of funds under the ARPA award.

DISCUSSION:

Approximately \$185,005.00 in ARPA funding and accrued interest remains uncommitted at this time. Staff would like to recommend that Council commit the current balance of the ARPA award, current interest, and any potential future accrued interest or unspent ARPA funds to the Childcare Assistance Program and to approve a budget adjustment.

Per the American Rescue Plan Act regulations, the ARPA funds must be formally committed by 12/31/2024. Any uncommitted ARPA funds after 12/31/2024 would need to be returned to the U.S. Department of the Treasury. The Childcare Assistance Program has been one of the most popular ARPA programs run by the City, and there continues to be a great demand for this funding.

BUDGET/STAFF IMPACT:

The remainder of the ARPA funds will be committed to this project. That includes the current balance of \$185,005.00 plus any future interest that will accrue on committed but currently unspent funds. Budget adjustment attached.

ATTACHMENTS: SRF (#3), BA (#4)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-109

Additional funding for ARPA Childcare Assistance Program

A RESOLUTION TO COMMIT THE REMAINING ARPA FUNDS TO THE CHILDCARE ASSISTANCE PROGRAM AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the City of Fayetteville was awarded \$17.9 million in American Rescue Plan Act funding to assist in responding to the negative effects of the COVID-19 pandemic; and

WHEREAS, beginning in 2021, the City established a number of projects to address the effects of the COVID-19 pandemic throughout the City including assistance to nonprofit organizations, vaccine incentives, workforce training, development programs, floodplain conservation, a childcare assistance program, funding to provide new ambulances to the regional ambulance authority, and programs to address housing instability in Fayetteville; and

WHEREAS, approximately \$185,005.00 in ARPA funding and accrued interest remains uncommitted at this time; and

WHEREAS, Staff recommends that City Council commit the current balance of the ARPA award, current interest, and any potential future accrued interest or unspent ARPA funds to the Childcare Assistance Program; and

WHEREAS, per the American Rescue Plan Act regulations, the ARPA funds must be formally committed by 12/31/2024 or the uncommitted funds would need to be returned to the U.S. Department of Treasury.

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 commits the current balance of the ARPA award, current interest, and any potential future accrued interest to the Childcare Assistance Program.

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.

City of Fayetteville Staff Review Form

2024-109

Item ID

6/18/2024

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

Steven Dotson

5/31/2024

CHIEF FINANCIAL OFFICER (110)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends that Council commit the remaining ARPA funds to the City Childcare Assistance Program and approve a budget adjustment. Per the American Rescue Plan Act regulations, all funds must be formally committed by 12/31/2024. At this point, approximately \$185,005.00 in ARPA funding remains uncommitted. Staff would like to recommend that Council commit the current balance of the ARPA award, current interest, and any potential future accrued interest or unspent ARPA funds to the Childcare Assistance Program.

Budget Impact:

2246.800.9721-5315.00

ARPA

Account Number

Fund

20023.2021

ARPA Childcare Assistance Program

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 575,222.00

Expenses (Actual+Encum)

\$ 483,609.39

Available Budget

\$ 91,612.61

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 185,005.00

Remaining Budget

\$ 276,617.61

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

Budget Year	Division	Adjustment Number
2024	CHIEF FINANCIAL OFFICER (110)	
	Requestor: Steven Dotson	

Staff recommends that Council commit the remaining ARPA funds to the City Childcare Assistance Program and approve a budget adjustment. Per the American Rescue Plan Act regulations, all funds must be formally committed by 12/31/2024. At this point, approximately \$185,005.00 in ARPA funding remains uncommitted. Staff would like to recommend that Council commit the current balance of the ARPA award, current interest, and any potential future accrued interest or unspent ARPA funds to the Childcare Assistance Program.

	COUNCIL DATE:	6/18/2024
	ITEM ID#:	2024-109
	Kevin Springer	
	5/31/2024 3:07 PM	
	Budget Division	Date
	D - (City Council)	
	TYPE:	
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]



MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Donna Wonsower, Planner

SUBJECT: **VAC-2024-0010: Vacation (3334 N. MANA CT./HALF MOON ORAL SURGERY, 212): Submitted by ENGINEERING SERVICES, INC. for property located at 3334 N. MANA CT. in WARD 3. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 2.62 acres. The request is to vacate 0.03 acres of a utility easement.**

RECOMMENDATION:

Staff recommends approval of **VAC-2024-0010** as shown in the attached Exhibits 'A' and 'B', and with the following conditions of approval:

1. Any damage or relocation of any existing facilities will be at the applicant's expense.
2. New easements must be granted to SWEPCO/AEP for future service.
3. Adjustment of sewer facilities must be designed, approved, constructed, and accepted prior to vacation.

BACKGROUND:

The 2.26-acre subject property is in north Fayetteville on E. Longview St. within a portion of the city that includes numerous existing medical facilities, including Washington Regional Medical Center, the Washington County Health Department, North Hills Medical Park, and others. An associated large-scale development (LSD-2024-0008) to develop the property with an 18,270 square-foot oral surgery facility and associated parking was approved at the May 28, 2024 Planning Commission meeting.

Request: The applicant proposes to vacate a 70'x20' portion of an existing general utility easement to the north of the proposed building that contains an existing sewer main. Because the proposed building and underground detention conflict with the location of the existing sewer main and manhole, the applicant proposes to pour a new manhole over the existing sewer main and connect with a 6" sanitary sewer service.

DISCUSSION:

The applicant submitted the required approvals with no objections, though with added conditions from franchise utility providers as listed above. With submittal of the required vacation forms and utility consent, staff recommends approval.

BUDGET/STAFF IMPACT:

NA

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Applicant Request Letter (#6), Petition to Vacate (#7), Survey (#8)



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-156

VAC-2024-0010: Vacation (3334 N. MANA CT./HALF MOON ORAL SURGERY, 212): Submitted by ENGINEERING SERVICES, INC. for property located at 3334 N. MANA CT. in WARD 3. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 2.62 acres. The request is to vacate 0.03 acres of a utility easement.

AN ORDINANCE TO APPROVE VAC-24-10 FOR PROPERTY LOCATED AT 3334 NORTH MANA COURT IN WARD 3 TO VACATE A 0.03 ACRE PORTION OF GENERAL 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 general utility easement is not required for corporate purposes.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates the portion of general utility easement as described in Exhibit B attached to the Planning Department's memo.

Section 2: A copy of this Ordinance duly certified by the City Clerk along with the map attached as Exhibit A to the Planning Department's memo shall be filed in the office of the Washington County Circuit Clerk.

Section 3: This vacation approval is subject to the following conditions:

1. Any damage to relocation of any existing facilities will be at the applicant's expense;
2. New easements must be granted to SWEPCO/AEP for future service; and
3. Adjustment of sewer facilities must be designed and constructed by the applicant and accepted and approved by the city prior to this vacation becoming final.

City of Fayetteville Staff Review Form

2024-156

Item ID

6/18/2024

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

Jonathan Curth

5/31/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

VAC-2024-0010: Vacation (3334 N. MANA CT./HALF MOON ORAL SURGERY, 212): Submitted by ENGINEERING SERVICES, INC. for property located at 3334 N. MANA CT. in WARD 3. The property is zoned R-O, RESIDENTIAL OFFICE and contains approximately 2.62 acres. The request is to vacate 0.03 acres of a utility easement.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

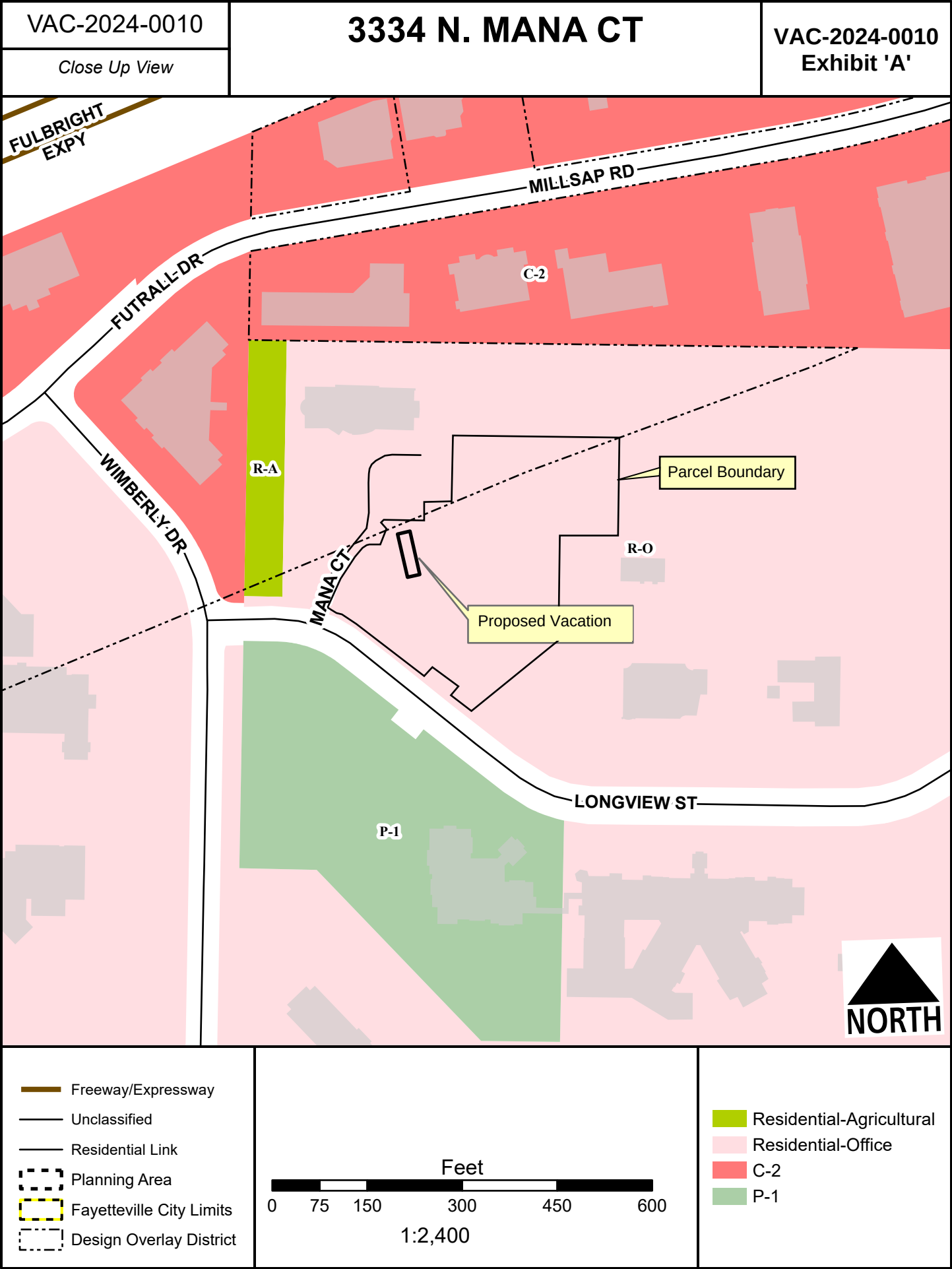
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



VAC-2024-0010
EXHIBIT 'B'

PROPERTY DESCRIPTION (PARCEL NO. 765-22643-001):

TRACT 1B OF THE TRACT SPLIT PLAT OF TRACTS 1A & 1B, BROOKSTONE SUBDIVISION, FAYETTEVILLE, ARKANSAS, RECORDED AS LAND DOCUMENT NO. 2016-00026618 AMONG THE LAND RECORDS OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING PART OF TRACT 1 OF BROOKSTONE SUBDIVISION AS SHOWN ON PLAT RECORD 23-36 AND ALSO PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 17 NORTH, RANGE 30 WEST IN WASHINGTON COUNTY, ARKANSAS, AND ALSO:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT, THENCE ALONG A CURVE TO THE RIGHT A DISTANCE OF 75.94 FEET TO THE POINT OF BEGINNING, SAID CURVE HAVING A RADIUS OF 235.00 FEET AND A LONG CHORD OF SOUTH 76°04'09" EAST 75.61 FEET; THENCE NORTH 22°14'05" EAST A DISTANCE OF 54.16 FEET, THENCE NORTH 40°33'04" EAST A DISTANCE OF 46.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ALONG SAID CURVE A DISTANCE OF 38.02 FEET, SAID CURVE HAVING A RADIUS OF 31.73 FEET AND A LONG CHORD NORTH 66°22'03" EAST 35.79 FEET; THENCE NORTH 23°24'16" EAST A DISTANCE OF 24.67 FEET; THENCE NORTH 39°07'41" WEST A DISTANCE OF 11.23 FEET, THENCE NORTH 46°54'01" EAST A DISTANCE OF 10.49 FEET, THENCE SOUTH 87°15'42" EAST A DISTANCE OF 61.00 FEET, THENCE NORTH 02°44'18" EAST A DISTANCE OF 25.50 FEET, THENCE SOUTH 87°14'37" EAST A DISTANCE OF 43.00 FEET, THENCE NORTH 02°44'37" EAST A DISTANCE OF 108.00 FEET, THENCE SOUTH 87°12'42" EAST A DISTANCE OF 263.50 FEET, THENCE SOUTH 02°23'52" WEST A DISTANCE OF 154.83 FEET, THENCE NORTH 87°16'04" WEST A DISTANCE OF 93.33 FEET; THENCE SOUTH 02°25'35" WEST A DISTANCE OF 166.60 FEET, THENCE SOUTH 53°10'03" WEST A DISTANCE OF 179.03 FEET TO THE NORTH RIGHT OF WAY OF E. LONGVIEW STREET, THENCE ALONG SAID RIGHT OF WAY AS FOLLOWS: NORTH 49°52'58" WEST A DISTANCE OF 40.14 FEET, NORTH 40°03'55" EAST A DISTANCE OF 20.06 FEET, NORTH 50°03'07" WEST A DISTANCE OF 50.12 FEET, SOUTH 39°53'52" WEST A DISTANCE OF 19.97 FEET, NORTH 49°48'48" WEST A DISTANCE OF 112.91 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE 73.69 FEET ALONG SAID CURVE AND CONTINUING ALONG SAID RIGHT OF WAY, SAID CURVE HAVING A RADIUS OF 235.00 FEET AND A LONG CHORD OF NORTH 57°49'38"W 73.39 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.62 ACRES, MORE OR LESS. SUBJECT TO THE RIGHT OF WAY OF E. LONGVIEW STREET ALONG THE SOUTH SIDE.

As described in **GENERAL WARRANTY DEED File# 2023-25610** of the records of the Circuit Clerk and Ex-Officio Recorder, Washington County, Arkansas.

VAC-2024-0010
EXHIBIT 'B'

UTILITY EASEMENT VACATION DESCRIPTION:(See Attached “Easement Exhibit A”)

PART OF TRACT 1B OF BROOKSTONE SUBDIVISION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, AS SHOWN ON TRACT SPLIT FILE NUMBER 2016-26618, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT 1B OF THE BROOKSTONE SUBDIVISION AS SHOWN ON TRACT SPLIT FILE NUMBER 2016-26618, SAID POINT BEING A FOUND MAG NAIL WITH CAP “PS 931”; THENCE ALONG THE WESTERN PROPERTY LINE, N22°14'05"E A DISTANCE OF 54.16 FEET TO A FOUND IRON PIN; THENCE N40°33'04"E A DISTANCE OF 46.68 FEET TO A FOUND IRON PIN; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 31.73 FEET, AN ARC LENGTH OF 38.02 FEET AND A CHORD BEARING AND DISTANCE OF N66°22'03"E- 35.79 FEET TO A FOUND IRON PIN; THENCE N23°24'16"E A DISTANCE OF 24.67 FEET TO A FOUND IRON PIN WITH CAP “PS 931”; THENCE N39°07'41"W A DISTANCE OF 11.23 FEET TO A FOUND IRON PIN; THENCE N46°54'01"E A DISTANCE OF 10.49 FEET TO A FOUND IRON PIN WITH CAP “PS 931”; THENCE S87°15'42"E A DISTANCE OF 13.02 FEET; THENCE LEAVING SAID PROPERTY LINE AND ALONG THE WESTERLY LINE OF UTILITY EASEMENT “B” AS SHOWN ON EASEMENT PLAT 23-334, S10°53'36"E A DISTANCE OF 26.38 FEET TO THE **POINT OF BEGINNING**; THENCE LEAVING SAID WESTERLY LINE, N79°06'24"E A DISTANCE OF 20.00 FEET TO THE EASTERLY LINE OF SAID UTILITY EASEMENT “B”; THENCE ALONG SAID EASTERLY LINE, S10°53'36"E A DISTANCE OF 69.99 FEET; THENCE LEAVING SAID EASTERLY LINE AND ALONG THE SOUTHERLY LINE OF SAID UTILITY EASEMENT “B”, S79°06'24"W A DISTANCE OF 20.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE AND ALONG THE WESTERLY LINE OF SAID UTILITY EASEMENT “B”, N10°53'36"W A DISTANCE OF 69.99 FEET TO THE **POINT OF BEGINNING**, CONTAINING 0.03 ACRES (1,400 SQUARE FEET), MORE OR LESS.

May 15, 2024

City of Fayetteville
Development Services Building
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Easement Vacation Submission
Half Moon Oral Surgery (LSD-2024-0008)
3334 N Mana Court
Fayetteville, AR 72704

City Council & Planning Commission:

Please accept this letter as a narrative accompanying an easement vacation as it relates to the proposed large-scale development Half Moon Oral Surgery at the referenced address. The proposed development is a 6,090 square foot 3-story building with underground detention and the associated site improvements. The proposed development is on Tract 1B of Brookstone Subdivision (parcel #765-22643-001). The portion of easement to be vacated is approximately 70'x20' and is in the interior of Tract 1B. Large portions of the site are encumbered by FEMA Floodplain, Streamside Protection Zone, and easements. To develop the property without disturbing the FEMA Floodplain or the Streamside Protection Zones, we are proposing underground detention in the portion of utility easement to be vacated. The only known utility in the easement is sewer. The existing sewer is proposed to be removed and a new manhole poured per LSD-2024-008. The sewer to be removed is the beginning of the line and only serves Tract 1B.

This submittal includes the following items:

- Metes and bounds of area to be vacated
- Survey of the site
- Legal description in MS Word and PDF
- Signed property owner consent form
- Petition to vacate easement
- Comments from all utility companies

Very truly yours,

Noah Geels, E.I.

Z:\Engineers\00 - Engineer Projects\24901- Half Moon Oral Surgery\EASEMENT VACATION\Transmittal Letter.docx

PETITION

PETITION TO VACATE A general utility/water & sewer EASEMENT LOCATED IN TRACT 1B OF THE BROOKSTONE SUBDIVISION, 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 Tract 1B of the Brookstone Subdivision, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate an easement which is described as follows:

PART OF TRACT 1B OF BROOKSTONE SUBDIVISION, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, AS SHOWN ON TRACT SPLIT FILE NUMBER 2016-26618, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT 1B OF THE BROOKSTONE SUBDIVISION AS SHOWN ON TRACT SPLIT FILE NUMBER 2016-26618, SAID POINT BEING A FOUND MAG NAIL WITH CAP "PS 931"; THENCE ALONG THE WESTERN PROPERTY LINE, N22°14'05"E A DISTANCE OF 54.16 FEET TO A FOUND IRON PIN; THENCE N40°33'04"E A DISTANCE OF 46.68 FEET TO A FOUND IRON PIN; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 31.73 FEET, AN ARC LENGTH OF 38.02 FEET AND A CHORD BEARING AND DISTANCE OF N66°22'03"E-35.79 FEET TO A FOUND IRON PIN; THENCE N23°24'16"E A DISTANCE OF 24.67 FEET TO A FOUND IRON PIN WITH CAP "PS 931"; THENCE N39°07'41"W A DISTANCE OF 11.23 FEET TO A FOUND IRON PIN; THENCE N46°54'01"E A DISTANCE OF 10.49 FEET TO A FOUND IRON PIN WITH CAP "PS 931"; THENCE S87°15'42"E A DISTANCE OF 13.02 FEET; THENCE LEAVING SAID PROPERTY LINE AND ALONG THE WESTERLY LINE OF UTILITY EASEMENT "B" AS SHOWN ON EASEMENT PLAT 23-334, S10°53'36"E A DISTANCE OF 26.38 FEET TO THE **POINT OF BEGINNING; THENCE LEAVING SAID WESTERLY LINE, N79°06'24"E A DISTANCE OF 20.00 FEET TO THE EASTERLY LINE OF SAID UTILITY EASEMENT "B"; THENCE ALONG SAID EASTERLY LINE, S10°53'36"E A DISTANCE OF 69.99 FEET; THENCE LEAVING SAID EASTERLY LINE AND ALONG THE SOUTHERLY LINE OF SAID UTILITY EASEMENT "B", S79°06'24"W A DISTANCE OF 20.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE AND ALONG THE WESTERLY LINE OF SAID UTILITY EASEMENT "B", N10°53'36"W A DISTANCE OF 69.99 FEET TO THE **POINT OF BEGINNING**, CONTAINING 0.03 ACRES (1,400 SQUARE FEET), MORE OR LESS.**

That the abutting real estate affected by said abandonment of the alley are Tract 1B of the Brookstone Subdivision 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 request that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

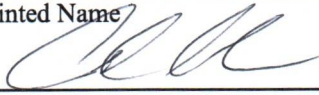
The petitioners further request that the above described real estate be vested in the abutting property owners as provided by law.

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

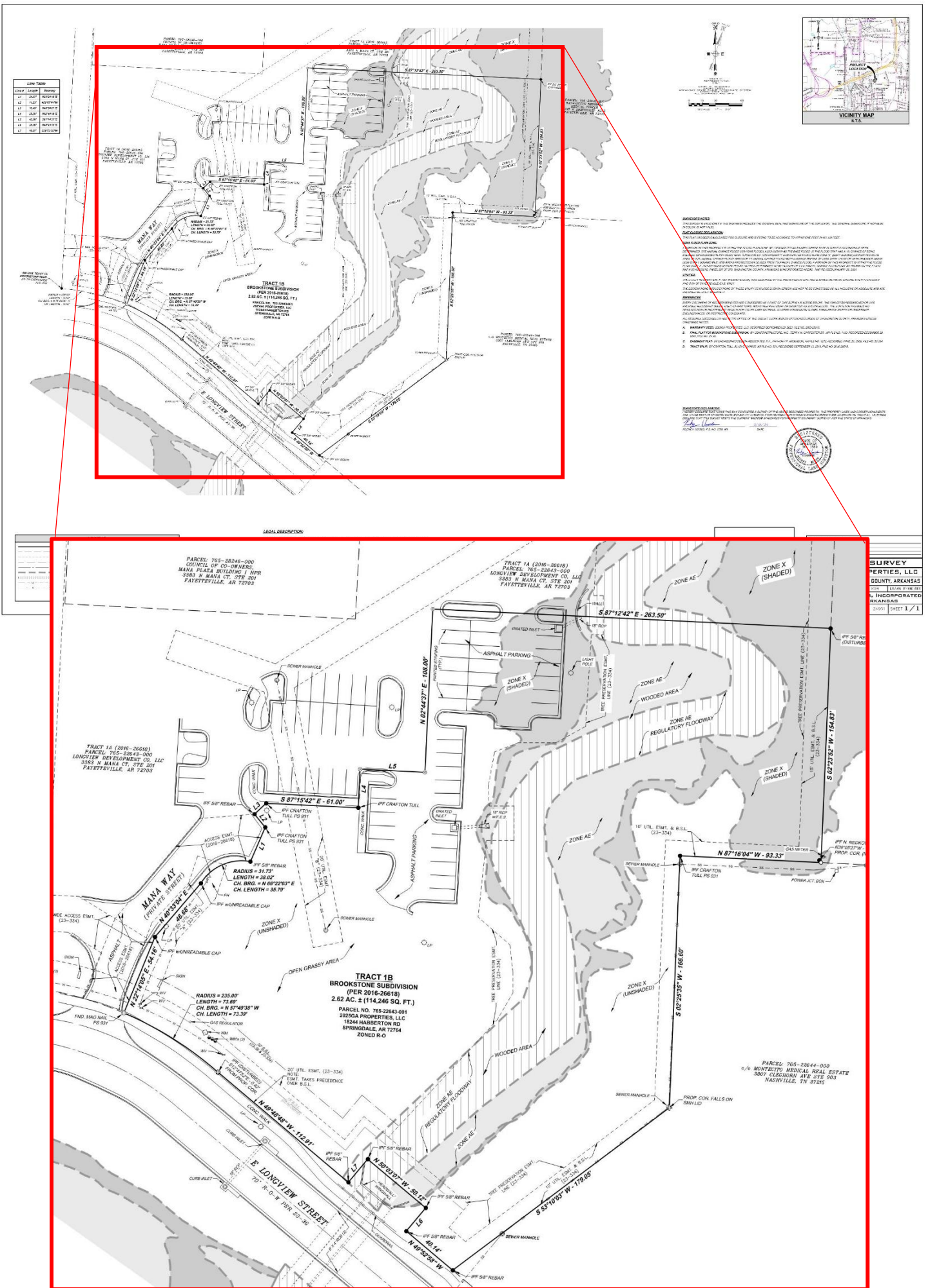
Dated this 30 day of May, 20 24.

Thomas Calvin Vaughan

Printed Name



Signature



NOTES:

* NOT A BOUNDARY SURVEY

UTILITY ESMT. AREA: 1,400 SQ.FT. (0.03 AC.)



GRAPHIC
REPRESENTATION
ONLY

BASIS OF BEARINGS:
ARKANSAS STATE PLANE
COORDINATE SYSTEM
NORTH ZONE 0301

S 87°15'42" E - 13.02'

N 46°54'01" E - 10.49'

N 39°07'41" W - 11.23'

N 23°24'16" E - 24.67'

RADIUS=31.73'

LENGTH=38.02'

CHORD BRG.=N 66°22'03" E

CHORD LENGTH=35.79'

**N MANA COURT
PRIVATE DRIVE**

P.O.B.

EX. 20' U.E.
"B" (23-334)

S 10°53'36" E
26.38'

N 79°06'24" E - 20.00'

EASEMENT TO BE ABANDONED
0.03 AC. ± (1,400 SQ. FT.)

S 10°53'36" E
69.99'

S 79°06'24" W - 20.00'

PARCEL NO. 765-22643-001
2025GA PROPERTIES, LLC
18244 HABBERTON RD
SPRINGDALE, AR 72764
ZONED R-O

P.O.C.

FOUND MAG NAIL
W/ CAP "PS 931"
SW COR. TRACT 1B
BROOKSTONE SUBDIVISION
PER FILE NO. 2016-26618

N 40°33'04" E
46.68'

N 22°14'05" E - 54.16'

E LONGVIEW STREET
70' R-O-W PER 23-36

SCALE: N.T.S.

DATE: May 10, 2024

DRAWN BY: T.A.

W.O. #: 24901

**VACATION EXHIBIT A
HALF MOON ORAL SURGERY
FAYETTEVILLE, ARKANSAS**





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Jessica Masters, Development Review Manager
Jonathan Curth, Development Services Director
Susan Norton, Chief of Staff

FROM: Kylee Cole, Planner

SUBJECT: **RZN-2024-0021: Rezoning (3390 W. MARTIN LUTHER KING JR BLVD/CATHCART RENTALS LLC, 557): Submitted by HALL ESTILL for property located at 3390 W. MARTIN LUTHER KING JR BLVD in WARD 1. The property is zoned R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, and RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.54 acres. The request is to rezone the property to UT, URBAN THOROUGHFARE.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property is in southwest Fayetteville approximately 0.77 miles west of I-49 along W. Martin Luther King Jr. Blvd. The property contains three parcels totaling approximately 1.54 acres and is developed with a 1,984-square-foot commercial structure constructed in 1975, according to Washington County Assessor records. The property is zoned a mixture of R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre which it received in 2003 with the adoption of a new city-wide zoning map.

Request: The request is to rezone the subject property from R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre to UT, Urban Thoroughfare.

Public Comment: To date, staff have received no public comment.

Land Use Compatibility: Staff finds the proposed rezoning from R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre to UT, Urban Thoroughfare to be compatible with the surrounding area. The subject property is adjacent to a variety of commercially-zoned properties to the east and west. To the south, across W. Martin Luther King Jr. is a large tract zoned UT, Urban Thoroughfare. To the north and northeast, there are several single-family homes along the south side of W. Old Farmington Rd. and Centennial Park along the north side. A rezoning to UT would allow for a wider variety of commercial and residential uses than those permitted under the property's current zoning designation. Specifically, a rezoning to UT would permit the development of a greater variety of dwellings, including the by-right development of single-family, two-family, three- and four-family dwellings, and multi-family dwellings. The portion of the property currently zoned R-O has variable bulk and area requirements depending on the

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

development type. A rezoning to UT would have no bulk and area requirements, which is consistent with the C-2 zoning for a portion of the property. R-O and C-2 districts permit a building height of five and six stories, respectively, with additional setback requirements for portions of a building that exceed two stories in height and are adjacent to single-family districts. UT provides a similar height limitation for proximity to single-family districts but permits up to seven-story development. While both R-O and C-2 provide an Urban Form option for buildings to locate near adjacent streets, UT requires it. The existing structure is meeting the Urban Form setbacks (with the potential for right-of-way dedication associated with future development) and height limitations for the proposed UT district. Further, the property's location along a Regional Link – High Activity Street and a corner lot is an ideal location for mixed use or commercial development. With consideration for the on-site stream, a tributary of the Farmington Branch, staff finds that existing zoning exemptions and streamside development standards will ensure sensitive development. Accordingly, the requested rezoning is compatible with surrounding land uses and provides opportunities for increased commercial services and housing opportunities in the neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be consistent with the City's land use and zoning plans. The subject property is designated as a City Neighborhood area in the City Plan 2040 Future Land Use Map and is located approximately midway between two Tier Two Centers: one at the intersection of I-49 and W. Martin Luther King Jr. Blvd. and the other at the intersection of S. Ruppel Rd. and W. Martin Luther King Jr. Blvd. as indicated on the plan's Growth Concept Map. Staff finds that a rezoning to UT would support those designations as both City Neighborhoods and Tier Two Centers exist to provide a mix of commercial and residential uses of varying scale. Staff also finds the requested rezoning to be aligned with City Goals 1 (encouragement of appropriate infill), 2 (discouragement of urban sprawl), 3 (compact, complete development), and potentially 6 (opportunities for attainable housing).

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of 8. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, 990 S. Hollywood Ave.)
- Near Sewer Main (8-inch main, on subject property)
- Near Water Main (8-inch water main, west side of W. Old Farmington Rd.; 6-inch water main, north side of W. Old Farmington Rd.)
- Near Grocery Store (Aldi)
- Near City Park (Centennial Park)
- Near Paved Trail (Old Farmington Trail)
- Near Razorback Bus Stop (ORT Route 44)
- Appropriate Future Land Use (City Neighborhood)

DISCUSSION:

At the May 28, 2024 Planning Commission meeting, a vote of 8-0-0 forwarded the request to City Council with a recommendation of approval. The commissioners cited future land use compatibility and staff recommendations as noted in the report as reasons for approval. No public comment was offered at the meeting.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Planning Staff Report (#6)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-162

RZN-2024-0021: Rezoning (3390 W. MARTIN LUTHER KING JR BLVD/CATHCART RENTALS LLC, 557): Submitted by HALL ESTILL for property located at 3390 W. MARTIN LUTHER KING JR BLVD in WARD 1. The property is zoned R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, and RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.54 acres. The request is to rezone the property to UT, URBAN THOROUGHFARE.

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-21 FOR APPROXIMATELY 1.54 ACRES LOCATED AT 3390 WEST MARTIN LUTHER KING JR. BOULEVARD IN WARD 1 FROM R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, AND RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE TO UT, URBAN THOROUGHFARE

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units Per Acre to UT, Urban Thoroughfare.

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.

City of Fayetteville Staff Review Form

2024-162

Item ID

6/18/2024

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

Jonathan Curth

5/31/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0021: Rezoning (3390 W. MARTIN LUTHER KING JR BLVD/CATHCART RENTALS LLC, 557): Submitted by HALL ESTILL for property located at 3390 W. MARTIN LUTHER KING JR BLVD in WARD 1. The property is zoned R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, and RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.54 acres. The request is to rezone the property to UT, URBAN THOROUGHFARE.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

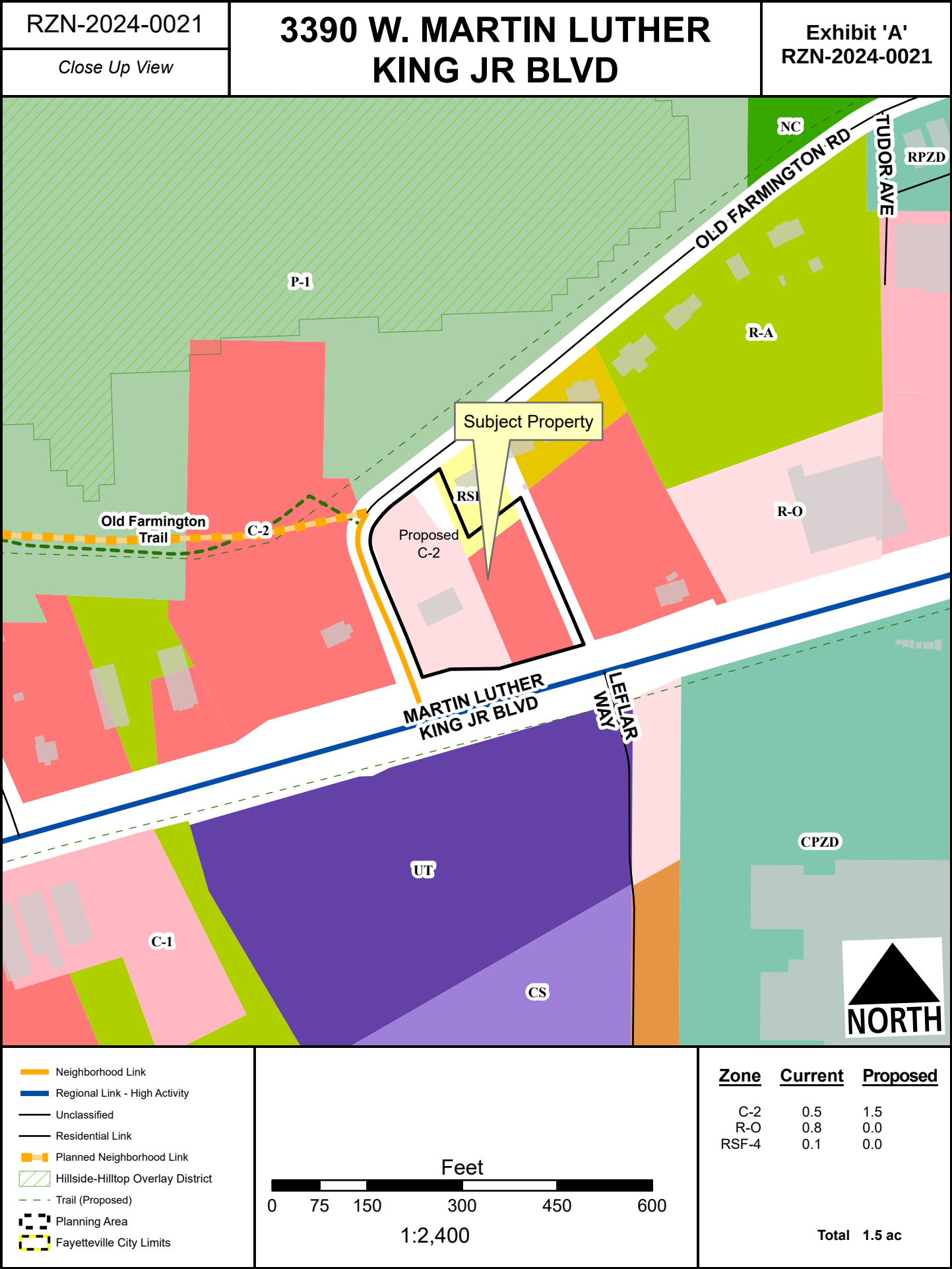
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



Parcel: 765-14796-000 (encompasses all three parcels)

A part of the Fractional Southwest Quarter of the Northwest Quarter of Section Nineteen, Township 16 North, Range Thirty West, Washington County, Arkansas, being more particularly described as follows:

Commencing at the Northeast Corner of said Fractional Southwest Quarter of the Fractional Northwest Quarter; Thence North $87^{\circ}04'28''$ West, along the North line of said Fractional Quarter; Thence South $02^{\circ}54'28''$ West a distance of 608.56 feet to the point of beginning; thence south $54^{\circ}54'59''$ West a distance of 103.73 feet; thence North $20^{\circ}51'24''$ West a distance of 117.03 feet to a point lying on the South right-of-way of Old Farmington Road; thence south $54^{\circ}35'59''$ West, along said right-of-way, a distance of 82.21 feet to a point of curvature of a curve concave to the southeast, having a radius of 140.40 feet, a central angle of $28^{\circ}36'41''$, a chord bearing of south $45^{\circ}23'17''$ West and a chord distance of 57.45 feet; thence Southwesterly, along the arc of said curve and along said right of way, a distance of 57.86 feet to the point of compound curve concave to the east, having a radius of 51.19 feet, a central angle of $46^{\circ}00'30''$, a chord bearing of south $04^{\circ}11'34''$ West and a chord distance of 40.01 feet; thence southerly, along the arc of said curve and said right-of-way, a distance of 41.11 feet to the point of tangency of said curve; thence south $18^{\circ}18'27''$ East, continuing along said right-of-way, a distance of 32.27 feet; thence south $20^{\circ}55'20''$ East, continuing along said right-of-way, a distance of 105.98 feet; thence south $19^{\circ}15'44''$ East, continuing along said right-of-way, a distance of 69.24 feet to a point lying on the North right-of-way U.S. Highway #62 West (Martin Luther King Jr. Boulevard); thence North $76^{\circ}11'07''$ East, departing said Old Farmington Road right-of-way and along said north right-of-way, a distance of 77.60 feet; thence North $76^{\circ}09'03''$ East, along said North right-of-way, a distance of 138.40 feet; thence North $21^{\circ}16'29''$ West, departing from said north right-of-way, a distance of 252.48 feet to the point of beginning.

Containing in all 67,198 sq. ft. or 1.54 acres, more or less.

Subject to easements, restrictions, reservations and rights-of-way of record.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Kylee Cole, Planner

MEETING DATE: May 28, 2024 **updated w/ meeting results**

SUBJECT: **RZN-2024-0021: Rezoning (3390 W. MARTIN LUTHER KING JR BLVD/CATHCART RENTALS LLC, 557):** Submitted by HALL ESTILL for property located at 3390 W. MARTIN LUTHER KING JR BLVD. The property is zoned R-O, RESIDENTIAL-OFFICE, C-2, THOROUGHFARE COMMERCIAL, and RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 1.62 acres. The request is to rezone the property to UT, URBAN THOROUGHFARE.

RECOMMENDATION:

Staff recommend forwarding **RZN-2024-0021** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0021** to City Council with a recommendation of approval."*

BACKGROUND:

The subject property is in southwest Fayetteville approximately 0.77 miles west of I-49 along W. Martin Luther King Jr. Blvd. The property contains three parcels totaling approximately 1.62 acres and is developed with a 1,984-square-foot commercial structure constructed in 1975, according to Washington County Assessor records. The property is zoned a mixture of R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre which it received in 2003 with the adoption of a new city-wide zoning map. Surrounding land uses and zoning are listed in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Centennial Park	P-1, Institutional
South	Undeveloped	UT, Urban Thoroughfare
East	Commercial; Single-Family Residential	C-2, Thoroughfare Commercial; RSF-4, Residential Single-Family, 4 Units per Acre
West	Single-Family Residential	C-2, Thoroughfare Commercial

Request: The request is to rezone the subject property from R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre to UT, Urban Thoroughfare.

Public Comment: To date, staff have received no public comment.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW:

- Streets:** The subject area has frontage along W. Martin Luther King Jr. Blvd. and W. Old Farmington Rd. W. Martin Luther King Jr. Blvd. is a partially improved Regional Link – High Activity Street with asphalt paving, curb and gutter, and noncontiguous sidewalks along the north and south sides. W. Old Farmington Rd. is a partially improved Neighborhood Link Street with asphalt paving and open ditches. Any street improvements required in these areas would be determined at the time of development proposal.
- Water:** Public water is available to the subject area. An existing 8-inch water main is present on the west side of W. Old Farmington Rd. An existing 6-inch water main is present on the north side of W. Old Farmington Rd.
- Sewer:** Sanitary sewer is available to the subject area. An existing 8-inch sewer main is present on the subject property.
- Drainage:** No portion of the subject property lies within the Hillside/Hilltop Overlay District. A portion of the subject property is within a FEMA-designated floodplain. A floodplain review will be required at the time of permit or plan submittal. This will restrict the type of development and impact in flood zones; and may require additional documentation such as flood studies or elevation certificates depending on the type of development. If a development impacts a floodplain, those impacts may require review and approval from FEMA. A protected stream runs along the southern portion of the property. Streamside Protection Zones generally consists of a protected area on each side of a stream or creek. This “protected area” is meant to preserve woody vegetation and natural areas along stream corridors to improve/protect stream health. At a minimum, it will be 50ft wide as measured from the top of bank but depending on the shape and extents of the floodway, it could be substantially more. Certain construction activities such as trails and some utilities are allowed in these zones, but in general, improvements such as parking lots or buildings are prohibited. Hydric soils are also present on the site, which is a known indicator of wetlands. However, for an area to be classified as wetlands, it may also need other characteristics such as hydrophytes (plants that grow in water), and shallow water during parts of the year. Hydric Soils can be found across many areas of Fayetteville, including valleys, floodplains, and open prairies. It’s important to identify these natural resources during development, so when these soils are identified on a property, further environmental studies will be required at the time of development. Before permits will be issued for the property a statement/report from an environmental professional must be provided summarizing the existence of wetlands on the property. If this statement/report indicates that wetlands may be present on site, a USACE Determination of Jurisdictional Wetlands will be required at the time of development submittal. Any improvements or requirements for drainage would be determined at the time of development submittal.
- Fire:** Station 6, located at 990 S. Hollywood Ave. protects this site. The property is located approximately 1.3 miles from the fire station with an anticipated drive time of approximately 4 minutes using existing streets. The anticipated response time

would be approximately 6.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the city limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck. Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development.

Police: The Police Department did not comment on this request.

Tree Preservation:

The current zoning districts of R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre require **20%, 15%, and 25% minimum canopy preservation, respectively.** The proposed zoning district of UT, Urban Thoroughfare requires **15% minimum canopy preservation.**

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **City Neighborhood.**

City Neighborhood are more densely developed than residential neighborhood areas and provide a mix of non-residential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single-family to multi-family. Non-residential and commercial uses are primarily located at street intersections and along major corridors. Ideally, commercial uses would have a residential component and vary in size, variety and intensity. The street network should have a high number of intersections creating a system of small blocks with a high level of connectivity between neighborhoods. Building setbacks and landscaping are urban in form with street trees typically being located within the sidewalk zone.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score range of **8** for this site with a weighted score of **9.5**. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, 990 S. Hollywood Ave.)
- Near Sewer Main (8-inch main, on subject property)
- Near Water Main (8-inch water main, west side of W. Old Farmington Rd.; 6-inch water main, north side of W. Old Farmington Rd.)
- Near Grocery Store (Aldi)
- Near City Park (Centennial Park)
- Near Paved Trail (Old Farmington Trail)
- Near Razorback Bus Stop (Walmart MLK)
- Appropriate Future Land Use (City Neighborhood)

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: **Land Use Compatibility:** Staff finds the proposed rezoning from R-O, Residential-Office, C-2, Thoroughfare Commercial, and RSF-4, Residential Single-Family, Four Units per Acre to UT, Urban Thoroughfare to be compatible with the surrounding area. The subject property is adjacent to a variety of commercially-zoned properties to the east and west. To the

south, across W. Martin Luther King Jr. is a large tract zoned UT, Urban Thoroughfare. To the north and northeast, there are several single-family homes along the south side of W. Old Farmington Rd. and Centennial Park along the north side. A rezoning to UT would allow for a wider variety of commercial and residential uses, than those permitted under the property's current zoning designation. Specifically, a rezoning to UT would permit the development of a greater variety of dwellings, including the by-right development of two-family, three- and four-family dwellings, and multi-family dwellings. The portion of the property currently zoned R-O has variable bulk and area requirements depending on the development type. A rezoning to UT would have no bulk and area requirements, which is consistent with the C-2 zoning for a portion of the property. R-O and C-2 districts permit a building height of five and six stories, respectively, with additional setback requirements for portions of a building that exceed two stories in height and are adjacent to single-family districts. UT provides a similar height limitation for proximity to single-family districts but permits up to seven-story development. While both R-O and C-2 provide an Urban Form option, UT would require future development in Urban Form. The existing structure is meeting the Urban Form setbacks (with the addition of right-of-way dedication along W. Old Farmington Rd. to meet the MSP requirements) and height limitations for the proposed UT district. Further, the property's location along a Regional Link – High Activity Street and a corner lot is an ideal location for mixed use or commercial development in Urban Form. Staff finds the requested rezoning to be compatible with surrounding land uses and provides opportunities for increased commercial services and housing opportunities in the neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be consistent with the City's land use and zoning plans. The subject property is designated as a City Neighborhood area in the City Plan 2040 Future Land Use Map and is located approximately midway between two Tier Two Centers, one at the intersection of I-49 and W. Martin Luther King Jr. Blvd. and the other at the intersection of S. Ruppel Rd. and W. Martin Luther King Jr. Blvd. as indicated on the plan's Growth Concept Map. Staff finds that a rezoning to UT would support those designations as both City Neighborhoods and Tier Two Centers exist to provide a mix of commercial and residential uses of varying scale. Staff also finds the requested rezoning to be aligned with City Goals 1(infill), 2 (discourage urban sprawl), 3 (compact, complete development), and potentially 6 (opportunities for attainable housing).

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

Finding: Staff finds that there is sufficient justification to rezone the property from R-O, C-2, and RSF-4 to UT since it would provide the opportunity for a variety of commercial and housing development options which support multiple goals of City Plan 2040. Further, the proposed rezoning is consistent with the property's future land use designation and clarifies zoning that does not follow parcel lines.

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

Finding: A rezoning from R-O, C-2, and RSF-4 to UT has some potential to increase traffic danger and congestion due to the addition of denser residential uses. The property has frontage along both W. Martin Luther King Jr. Blvd. and W. Old Farmington Rd. and is near a paved trail and bus stop which may mitigate some of the potential for increased traffic. Any street improvements in the area would be determined at the time of development review.

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: A rezoning from R-O, C-2, and RSF-4 to UT has some potential to increase population density due to the addition of denser residential uses up to multi-family dwellings with no density limitation. The property currently has access to public streets, water, and sewers, and any necessary improvements would be determined at the time of development.

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

RECOMMENDATION: Planning staff recommend forwarding RZN-2024-0021 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>May 28, 2024</u>	☐ Tabled	☒ Forwarded w/ recommendation of approval	☐ Denied
Motion: Garlock			
Second: Castin			
Vote: 8-0-0			

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code
 - §161.20 – District R-O, Residential Office
 - §161.23 – District C-2, Thoroughfare Commercial
 - §161.24 – Urban Thoroughfare
- Request Letter
- Exhibit: BTZ & Minimum Buildable Street Frontage
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map

161.20 District R-O, Residential Office

(A) *Purpose.* The Residential-Office District is designed primarily to provide area for offices without limitation to the nature or size of the office, together with community facilities, restaurants and compatible residential uses. The intent of this district is to allow administrative approval if the developer decides to use urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 12a	Limited business
Unit 25	Offices, studios, and related services
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 11	Manufactured home park*
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 24	Home occupations
Unit 26	Multi-family dwellings
Unit 36	Wireless communications facilities*
Unit 42	Clean technologies
Unit 45	Small scale production

(C) *Density.*

Units per acre	24 or less
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(D) *Bulk and Area Regulations.* (Per dwelling unit for residential structures)

(1) *Lot Width Minimum.*

Manufactured home park	100 feet
Lot within a manufactured home park	50 feet
Single-family	60 feet
Two (2) family	60 feet
Three (3) or more	90 feet

(2) *Lot Area Minimum.*

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 square feet
Townhouses:	
Development	10,000 square feet
Individual lot	2,500 square feet
Single-family	6,000 square feet
Two (2) family	6,500 square feet
Three (3) or more	8,000 square feet
Fraternity or Sorority	1 acre

(3) *Land Area Per Dwelling Unit.*

Manufactured home	3,000 square feet
Townhouses & apartments:	
No bedroom	1,000 square feet
One bedroom	1,000 square feet
Two (2) or more bedrooms	1,200 square feet
Fraternity or Sorority	500 square feet per resident

(E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Front, in the Hillside Overlay District	15 feet
Side	10 feet
Side, when contiguous to a residential district	15 feet
Side, in the Hillside Overlay District	8 feet
Rear, without easement or alley	25 feet
Rear, from center line of public alley	10 feet
Rear, in the Hillside Overlay District	15 feet

Urban Form Setback Regulations:

Front	A build-to zone that is located between the front property line and a line 25 feet from the front property line
Side	5 feet
Side-zero lot line*	A setback of less than 5 feet (zero lot line) is permitted on one (1) interior side, provided a maintenance agreement is filed.** The remaining side setback(s) shall be 10 feet

Rear	None
Rear when contiguous to a single family residential district	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	5 stories
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If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any side boundary line of an adjacent single family district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

- (G) *Building Area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.
- (H) Urban form minimum buildable street frontage: 50% of the lot width.

161.23 District C-2, Thoroughfare Commercial

- (A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers. The intent of this district is to allow administrative approval if the developer decides to use urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 25	Offices, studios, and related services
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor store
Unit 40	Sidewalk Cafes
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 32	Sexually oriented business
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units

Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and Area Regulations.* None.

(E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	None
Side, when contiguous to a residential district	15 feet
Rear	20 feet

Urban Form Setback Regulations:

Front	A build-to zone that is located between 10 feet and a line 25 feet from the front property line
Side and rear	None
Side or rear, when contiguous to a single-family residential district	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	6 stories*
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* If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from side boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

(H) Urban form minimum buildable street frontage: 50% of the lot width.

161.24 Urban Thoroughfare

- (A) *Purpose.* The Urban Thoroughfare District is designed to provide goods and services for persons living in the surrounding communities. This district encourages a concentration of commercial and mixed use development that enhances function and appearance along major thoroughfares. Automobile-oriented development is prevalent within this district and a wide range of commercial uses is permitted. For the purposes of Chapter 96: Noise Control, the Urban Thoroughfare district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.
- (B) *Uses.*
- (1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor store
Unit 40	Sidewalk cafes
Unit 41	Accessory Dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

- (2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 33	Adult live entertainment club or bar
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 38	Mini-storage units
Unit 42	Clean technologies
Unit 43	Animal boarding and training

- (C) *Density.* None
- (D) *Bulk and Area Regulations.*
- (1) *Lot Width Minimum.*

Single-family dwelling	18 feet
All other dwellings	None
Non-residential	None

(2) *Lot area minimum.* None

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	5 stories/7 stories*
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* A building or a portion of a building that is located between 10 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of five (5) stories. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of seven (7) stories.

If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any boundary line of an adjacent single family district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

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

April 30, 2024

VIA PORTAL DELIVERY

City of Fayetteville Planning Commission and Planning Department
125 West Mountain St.
Fayetteville, AR 72701

RE: RZN '24-21 **AMENDED** Petition for Rezoning of Parcels No. 765-14796-001,
3399 & 3425 W. Old Farmington Rd. & 765-14797-000, 3390 W. Martin Luther
King, Jr. Blvd. From R-O and C-2 to UT (both)

To whom it may concern:

Please consider this letter as an Amended Petition to request the rezoning of the above referenced parcels from their current designation of R-O and C-2 to UT. The UT district is designated to provide areas for commercial enterprise surrounding communities and encourages concentration of commercial and mixed-used development along major thoroughfares which would include automobile-oriented development with a wide range of commercial uses permitted.

Further, UT is compatible with the surrounding properties. Further, UT would fit into the future land use of this area. Lastly, this rezoning will not unreasonably affect in any adverse way the surrounding land uses.

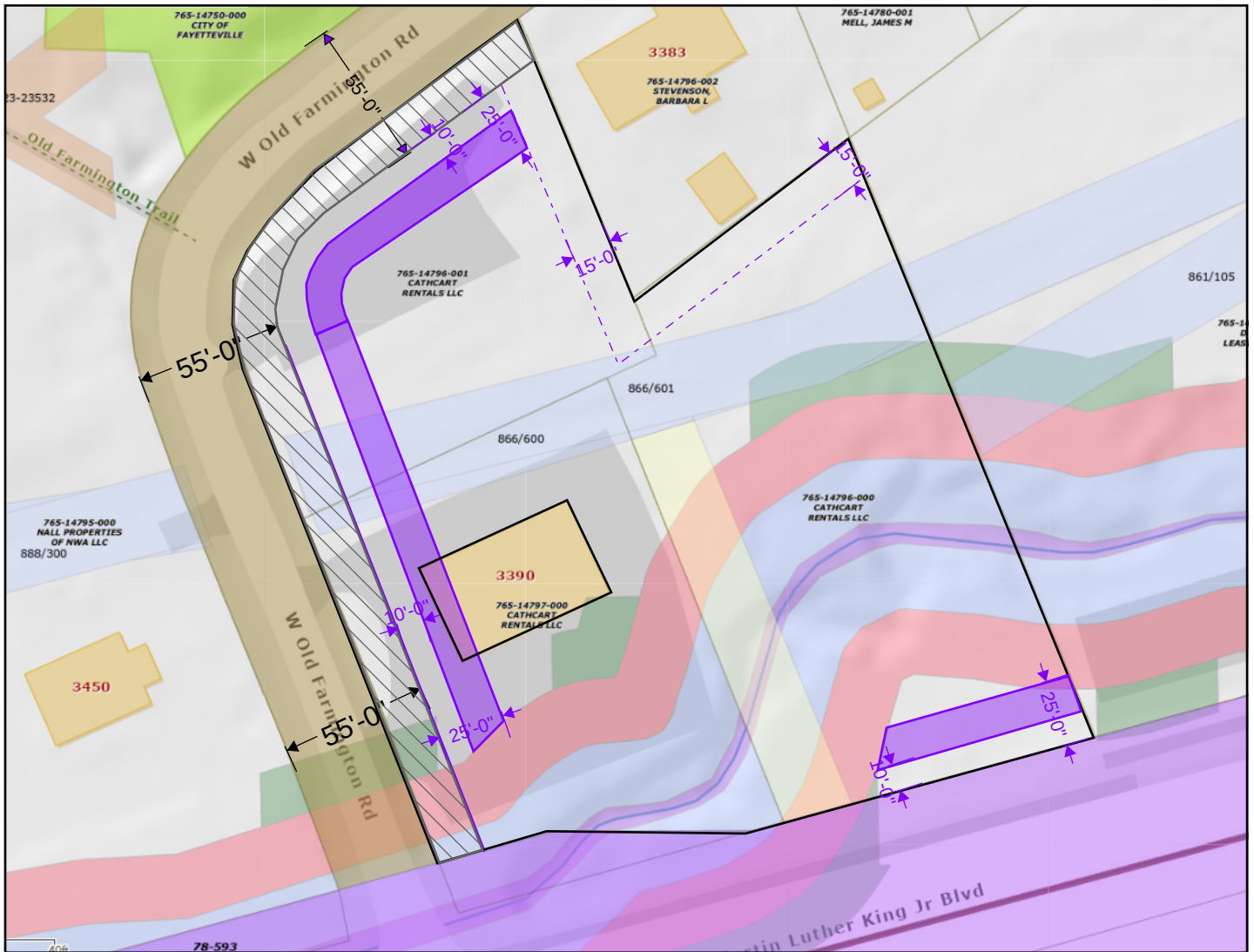
Sincerely,

/s/ Robert K. Rhoads

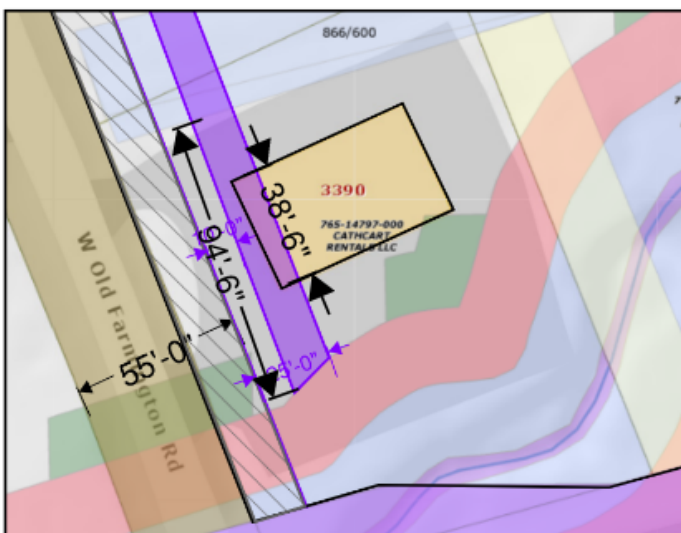
Robert K. Rhoads

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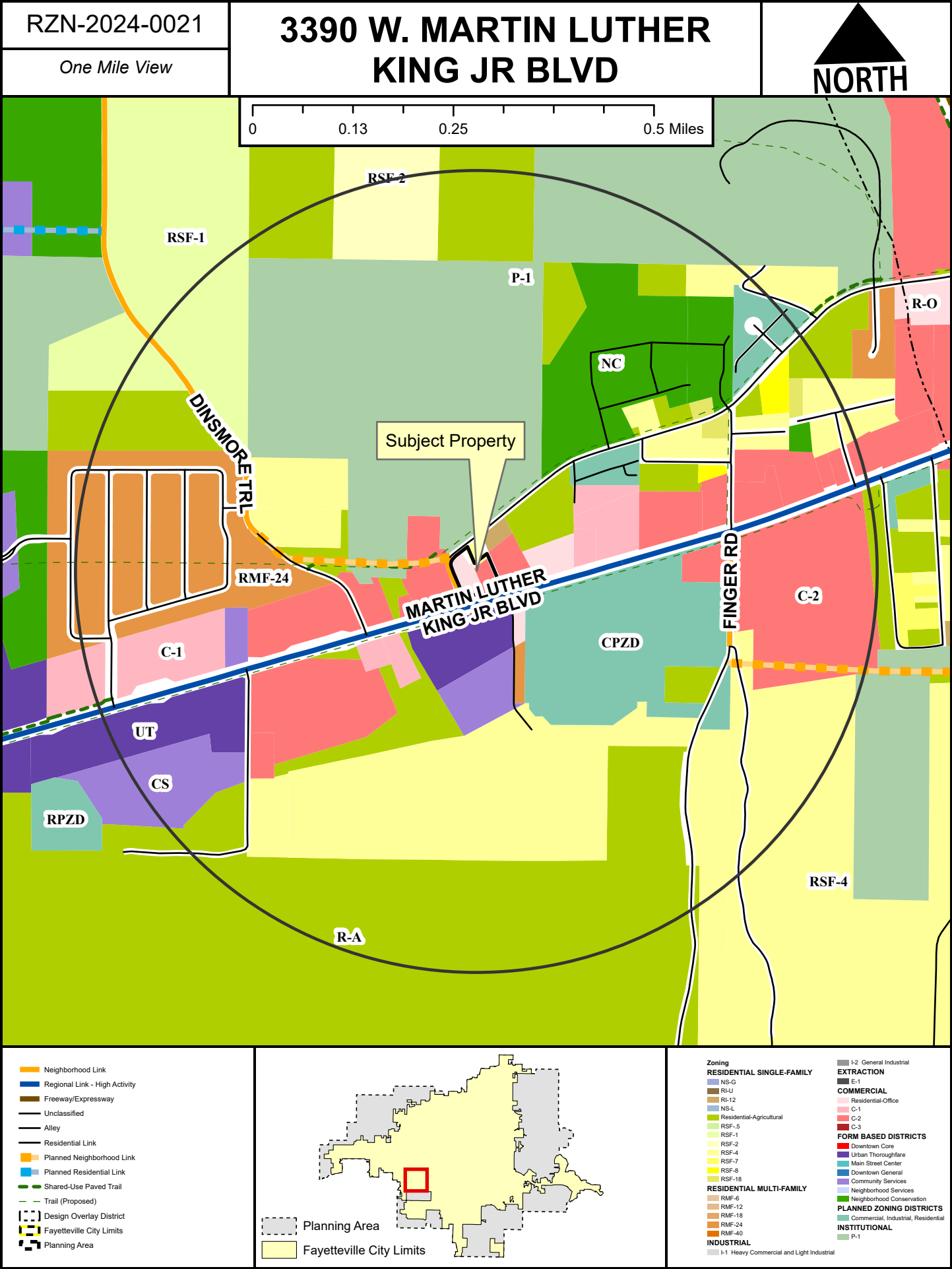
Exhibit BTZ & Minimum Buildable Street Frontage

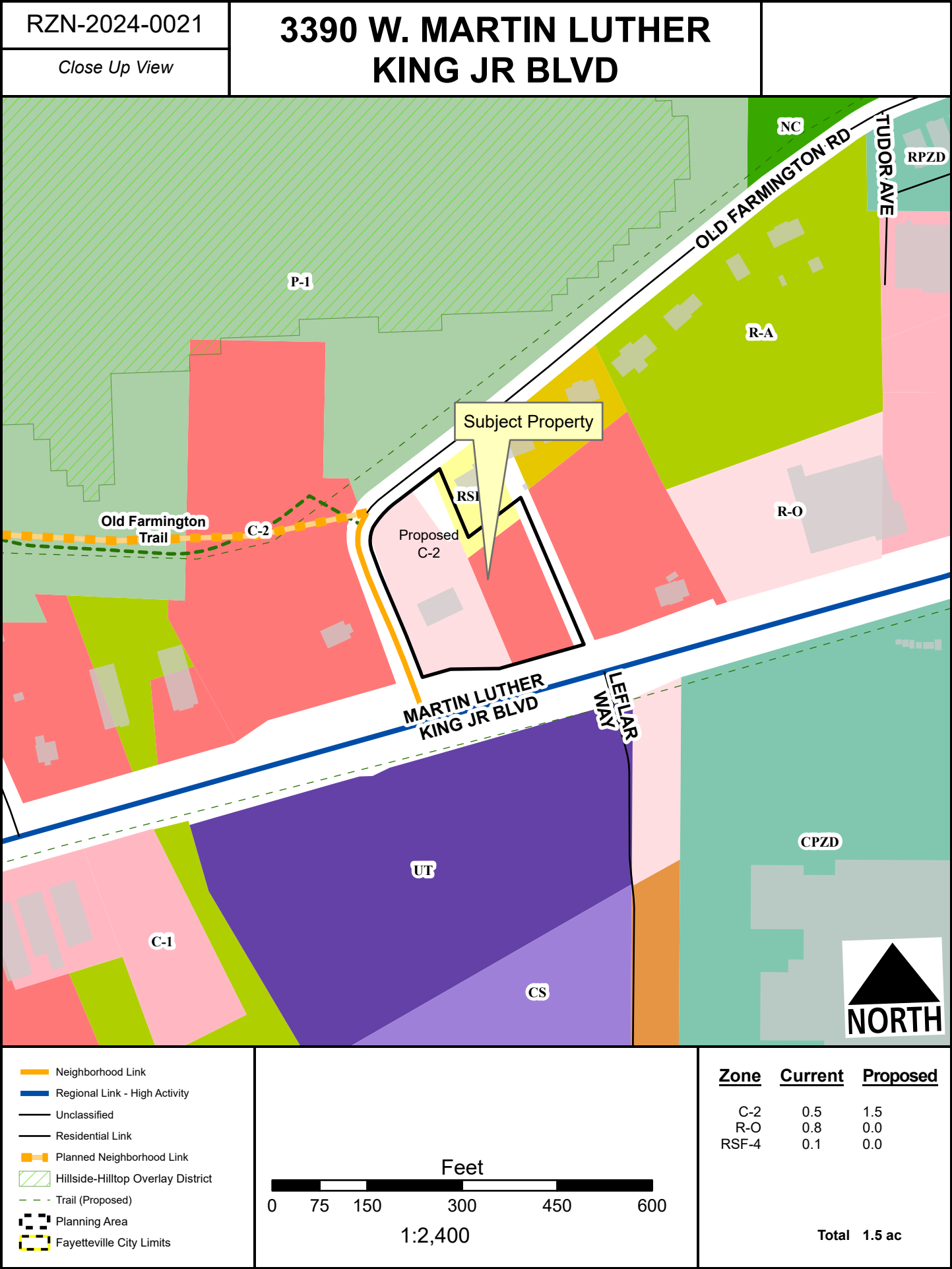


Build-To Zone Additional MSP R/W

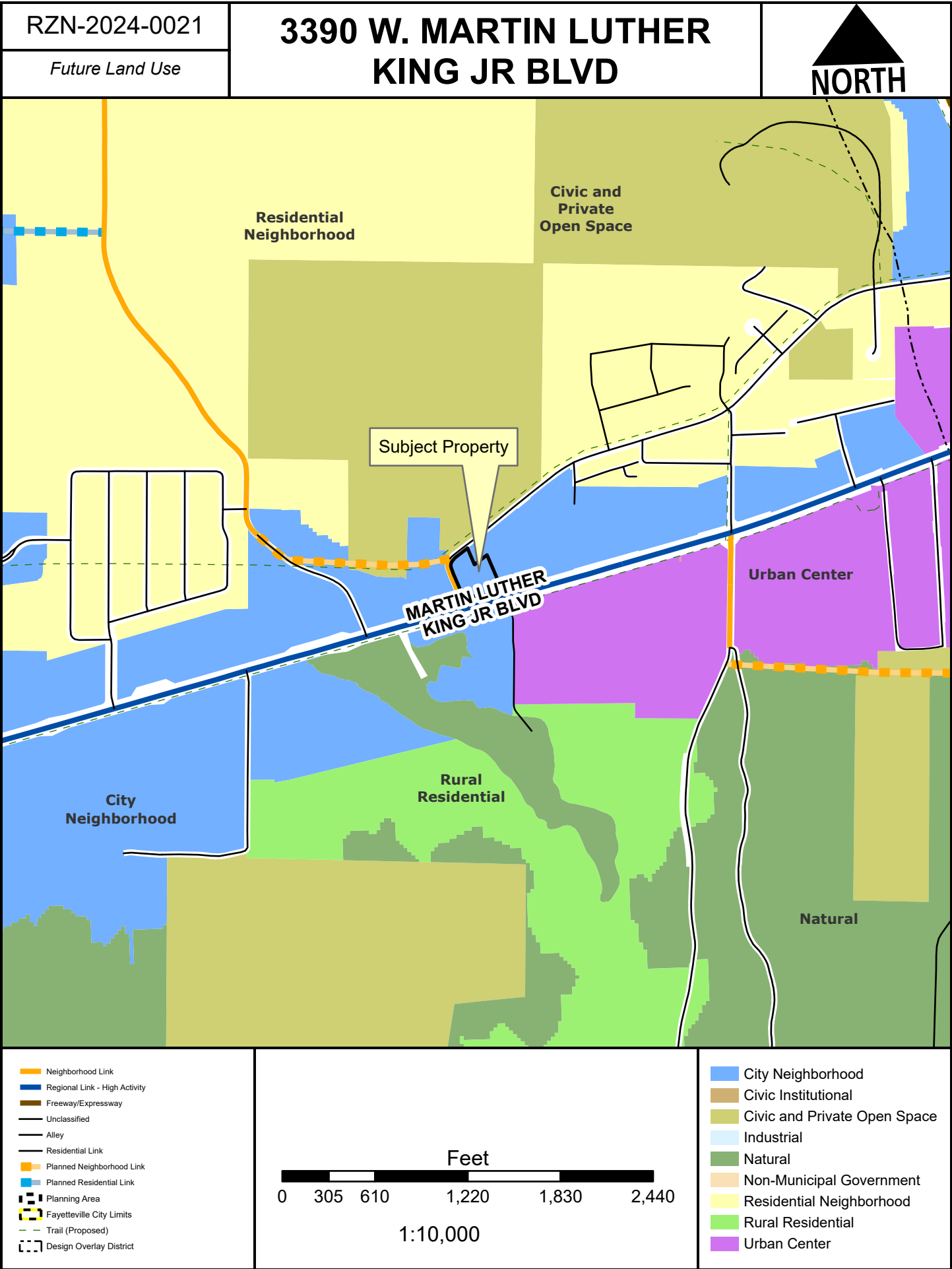


50% Minimum Buildable Street Frontage = 47.25"











MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Kylee Cole, Planner

SUBJECT: **RZN-2024-0022: Rezoning (951 N. DOUBLE SPRINGS RD/R&D PROPERTY HOLDINGS LLC, 435): Submitted by DUSTIN DAVIS for property located at 951 N. DOUBLE SPRINGS RD. in WARD 4. The property is zoned R-A, RESIDENTIAL - AGRICULTURAL and contains approximately 0.56 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES-GENERAL.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property is in west Fayetteville, at the southwest corner of N. Double Springs Rd. and W. Nicole Ln. approximately 0.07 miles south of W. Wedington Dr. The property contains approximately 0.56 acres and is developed with a 2,200-square-foot single-family dwelling constructed in 1969, according to Washington County Assessor records. The property is zoned R-A, Residential-Agricultural, which it received in 2003 with the adoption of a new city-wide zoning map.

Request: The request is to rezone the subject property from R-A, Residential-Agricultural, to NS-G, Neighborhood Services General.

Public Comment: To date, staff have received no public comment.

Land Use Compatibility: Staff finds the proposed rezoning from R-A, Residential-Agricultural, to NS-G, Neighborhood Services, to be compatible with the surrounding area. The subject property is near properties with commercial and mixed-use zoning districts to the north and east. To the west and east are two-family dwellings, and to the south are single-family residential dwellings. A rezoning to NS-G would allow for a wider variety of medium intensity commercial and residential uses than those permitted under the property's current zoning designation. Specifically, a rezoning to NS-G permits the development of a greater variety of dwellings, including the by-right development of single-, two-, three-, and four-family dwellings. NS-G would also provide opportunities for small-scale commercial use. These uses would provide a logical transition between the higher-intensity C-1 and C-2 zoning at the intersection of W. Wedington Dr. and N. Double Springs Rd to the lower intensity development to the south. Under the current R-A zoning, the property is non-conforming to bulk and area requirements. R-A requires a lot width minimum of 200 feet and an area requirement of 2 acres, where the subject property is limited to 90 feet and 0.56 acres respectively. The subject property meets the

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

minimum bulk and area requirements for NS-G. R-A has no maximum height limit but does require additional setbacks for heights exceeding one story. NS-G has a maximum building height of three stories, which is comparable or less than surrounding entitlements. R-A has conventional building setbacks where NS-G provides for development in Urban Form similar to other properties along W. Nicole Ln. With the existing structure not meeting the build-to zone requirement, any nonconformities would be reviewed at the time of development review. Further, the property's location at a corner lot along a Neighborhood Link Street is an ideal location for the small- to medium-scale mix of uses or commercial development that can serve the surrounding residential neighborhood. Staff finds the requested rezoning to be compatible with surrounding land uses and provides opportunities for increased nonresidential services and housing opportunities in the neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be consistent with the City's land use and zoning plans. The subject property is designated as a Residential Neighborhood area in the City Plan 2040 Future Land Use Map and is located just 0.07 miles south of a Tier Three Center as indicated on the plan's Growth Concept Map. Staff finds that a rezoning to NS-G would support those designations as both Residential Neighborhood Areas and Tier Three Centers exist to provide a mix of commercial and residential uses of varying scale. Staff also finds the requested rezoning to be aligned with City Goals 3 (compact, complete development) and potentially 6 (opportunities for attainable housing).

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of **5** for this site. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 7, 835 N. Ruppel Rd.)
- Near Sewer Main (6-inch main, adjacent to subject property)
- Near Water Main (4-inch water main, west side of N. Double Springs Rd.; 8-inch water main, east side of N. Double Springs Rd.; 2-inch water main, north side of W. Nicole Ln.)
- Near City Park (Harmony Pointe Park)
- Near Paved Trail (W. Wedington Dr. Side-Path Trail)

DISCUSSION:

At the May 28, 2024 Planning Commission meeting, a vote of 8-0-0 forwarded the request to City Council with a recommendation of approval. The commissioners cited future land use compatibility and staff recommendations as noted in the report as reasons for approval. No public comment was made at the meeting.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Planning Staff Report (#6)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-163

RZN-2024-0022: Rezoning (951 N. DOUBLE SPRINGS RD/R&D PROPERTY HOLDINGS LLC, 435): Submitted by DUSTIN DAVIS for property located at 951 N. DOUBLE SPRINGS RD. in WARD 4. The property is zoned R-A, RESIDENTIAL - AGRICULTURAL and contains approximately 0.56 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES-GENERAL.

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-22 FOR APPROXIMATELY 0.56 ACRES LOCATED AT 951 NORTH DOUBLE SPRINGS ROAD IN WARD 4 FROM R-A, RESIDENTIAL AGRICULTURAL TO NS-G, NEIGHBORHOOD SERVICES-GENERAL

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from R-A, Residential Agricultural to NS-G, Neighborhood Services-General.

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.

City of Fayetteville Staff Review Form

2024-163

Item ID

6/18/2024

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

Jonathan Curth

5/31/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0022: Rezoning (951 N. DOUBLE SPRINGS RD/R&D PROPERTY HOLDINGS LLC, 435): Submitted by DUSTIN DAVIS for property located at 951 N. DOUBLE SPRINGS RD. in WARD 4. The property is zoned R-A, RESIDENTIAL - AGRICULTURAL and contains approximately 0.56 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES-GENERAL.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number:

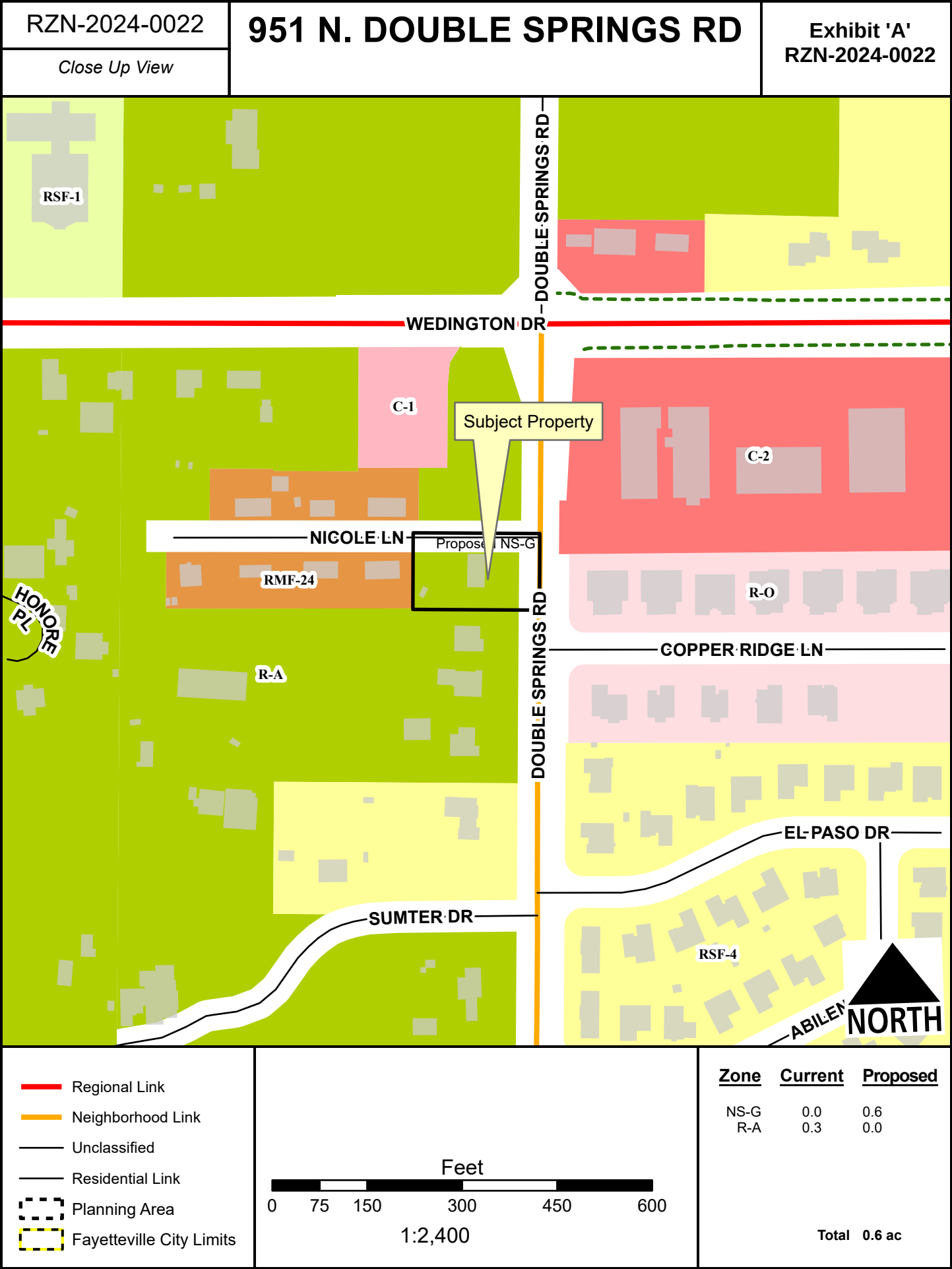
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



LEGAL DESCRIPTION

951 N DOUBLE SPRINGS RD FAYETTEVILLE, AR

Physical Address: 951 N DOUBLE SPRINGS RD

Subdivision: 10-16-31 FAYETTEVILLE OUTLOTS

Block/Lot: N/A / N/A

S-T-R: 10-16-31

Size (Acres): 0.56

Legal: See *Extended Legal*

PT NW SE 0.56 AC (121 X 200) FURTHER DESCRIBED FROM 1339-112 AS: Part of the NW/4 of the SE/4 of Section Ten (10), Township Sixteen (16) North, Range Thirty-One (31) West, described as beginning 327 feet South of the Northeast corner of said 40 acre tract, thence South 121 feet, thence West 200 feet, thence North 121 feet, thence East 200 feet to the point of beginning.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Kylee Cole, Planner

MEETING DATE: May 28, 2024 **updated w/ meeting results**

SUBJECT: **RZN-2024-0022: Rezoning (951 N. DOUBLE SPRINGS RD/R&D PROPERTY HOLDINGS LLC, 435):** Submitted by DUSTIN DAVIS for property located at 951 N. DOUBLE SPRINGS RD. The property is zoned R-A, RESIDENTIAL - AGRICULTURAL and contains approximately 0.56 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES-GENERAL.

RECOMMENDATION:

Staff recommend forwarding **RZN-2024-0022** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0022** to City Council with a recommendation of approval."*

BACKGROUND:

The subject property is in west Fayetteville approximately 0.07 miles south of W. Wedington Dr. along N. Double Springs Rd. The property contains approximately 0.56 acres and is developed with a 2,200-square-foot single-family dwelling constructed in 1969, according to Washington County Assessor records. The property is zoned a mixture of R-A, Residential Agricultural which it received in 2003 with the adoption of a new city-wide zoning map. Surrounding land uses and zoning are listed in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Undeveloped	R-A, Residential-Agricultural
South	Single-Family Residential	R-A, Residential-Agricultural
East	Two-Family Residential	R-O, Residential-Office
West	Two-Family Residential	RMF-24, Residential Multi-Family, 24 Units per Acre

Request: The request is to rezone the subject property from R-A, Residential-Agricultural to NS-G, Neighborhood Services General.

Public Comment: To date, staff have received no public comment.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW:

- Streets:** The subject area has frontage along N. Double Springs Rd., a partially improved Neighborhood Link Street with asphalt paving, curb and gutter, and sidewalks along the east side and open ditches on the west side. The property also has frontage along W. Nicole Ln., a private street. Any street improvements required in these areas would be determined at the time of development proposal.
- Water:** Public water is available to the subject area. An existing 4-inch water main is present on the west side of N. Double Springs Rd. An existing 8-inch water main is present on the east side of N. Double Springs Rd. An existing 2-inch water main is present on the north side of W. Nicole Ln.
- Sewer:** Sanitary sewer is available to the subject area. An existing 6-inch sewer main is present on the west side of the property line in an existing sewer easement.
- Drainage:** No portion of the subject property lies within the Hillside/Hilltop Overlay District. No portion of the property is within a FEMA-designated floodplain and there are no protected streams or hydric soils present on the site. Any improvements or requirements for drainage would be determined at the time of development submittal.
- Fire:** Station 7, located at 835 N. Ruppel Rd., protects this site. The property is located approximately 2.2 miles from the fire station with an anticipated drive time of approximately 4 minutes using existing streets. The anticipated response time would be approximately 6.2 minutes. Fire Department response time is calculated based on the drive time plus 1 minute for dispatch and 1.2 minutes for turn-out time. Within the city limits, the Fayetteville Fire Department has a response time goal of 6 minutes for an engine and 8 minutes for a ladder truck. Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development.
- Police:** The Police Department did not comment on this request.
- Tree Preservation:**
The current zoning district of R-A, Residential-Agricultural requires **25% minimum canopy preservation**. The proposed zoning district of NS-G, Neighborhood Services - General requires **20% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **Residential Neighborhood**.

Residential Neighborhood areas are primarily residential in nature and support a wide variety of housing types of appropriate scale and context. Residential Neighborhood encourages highly connected, compact blocks with gridded street patterns and reduced building setbacks. It also encourages traditional neighborhood development that incorporates low-intensity non-residential uses intended to serve the surrounding neighborhoods. This designation recognizes the existing conventional subdivision developments that may have large blocks with conventional setbacks and development patterns that respond to features of the natural environment.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score range of **5** for this site with a weighted score of **4.5**. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 7, 835 N. Ruppel Rd.)
- Near Sewer Main (6-inch main, adjacent to subject property)
- Near Water Main (4-inch water main, west side of N. Double Springs Rd.; 8-inch water main, east side of N. Double Springs Rd.; 2-inch water main, north side of W. Nicole Ln.)
- Near City Park (Harmony Pointe Park)
- Near Paved Trail (W. Wedington Dr. Side-Path Trail)

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: ***Land Use Compatibility:*** Staff finds the proposed rezoning from R-A, Residential-Agricultural to NS-G, Neighborhood Services, to be compatible with the surrounding area. The subject property is near properties with commercial and mixed-use zoning districts to the north and east. To the west and east are two-family dwellings, and to the south are single-family residential dwellings. A rezoning to NS-G would allow for a wider variety of medium intensity commercial and residential uses than those permitted under the property's current zoning designation. Specifically, a rezoning to NS-G would permit the development of a greater variety of dwellings, including the by-right development of two-, three- and four-family dwellings. NS-G would also provide opportunities for small-scale commercial use. These uses would provide a logical transition between the higher-intensity C-1 and C-2 zoning at the intersection of W. Wedington Dr. and N. Double Springs Rd. (a Tier Three Center). Under the current R-A zoning, the property is non-conforming to bulk and area requirements. Typically, R-A requires a lot width minimum of 200 feet and an area requirement of 2 acres, but the subject property has a lot width of only 90 feet and an area of only 0.56 acres. The subject property exceeds the minimum bulk and area requirements for NS-G. R-A has no maximum height limit but does require additional setbacks for heights exceeding one story. NS-G has a maximum building height of three stories, which is compatible with surrounding development. R-A has typical setbacks, but NS-G provides for development in Urban Form. The existing structure does not meet the build-to zone requirement, but any non-conformities would be reviewed at the time of development review. Further, the property's location along a Neighborhood Link Street and a corner lot is an ideal location for mixed use or commercial development to serve the surrounding residential neighborhood. Staff finds the requested rezoning to be compatible with surrounding land uses and provides opportunities for increased commercial services and housing opportunities in the neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be consistent with the City's land use and zoning plans. The subject property is designated as a Residential Neighborhood area in the City Plan 2040 Future Land Use Map and is located just 0.07 miles south of a Tier Three Center as indicated on the plan's Growth Concept Map. Staff finds that a rezoning to NS-G would support those designations as both Residential Neighborhood Areas and

Tier Three Centers exist to provide a mix of commercial and residential uses of varying scale. Staff also finds the requested rezoning to be aligned with City Goals 3 (compact, complete development) and potentially 6 (opportunities for attainable housing).

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

Finding: Staff finds that there is sufficient justification to rezone the property from R-A to NS-G since it would provide the opportunity for a variety of commercial and housing development options which support multiple goals of City Plan 2040. Further, the subject property is currently non-conforming to bulk and area requirements for R-A. The proposed rezoning is consistent with the property's future land use designation.

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

Finding: A rezoning from R-A to NS-G has some potential to increase traffic danger and congestion due to the addition of denser residential uses, however the limited size of the property would limit the amount of development and related traffic. The property has frontage along N. Double Springs Rd. and is near a paved trail which may mitigate some of the potential for increased traffic. Any street improvements in the area would be determined at the time of development review.

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: A rezoning from R-A to NS-G has some potential to increase population density due to the addition of denser residential uses up four-family dwellings at a density of up to 18 units per acre (up to ten units for the subject property). The property currently has access to public streets, water, and sewers, and any necessary improvements would be determined at the time of development. Fayetteville Public Schools did not comment on this request.

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

RECOMMENDATION: Planning staff recommend forwarding RZN-2024-0022 to City

Council with a recommendation of approval.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>May 28, 2024</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: Werner		w/ recommendation of approval			
Second: Cabe					
Vote: 8-0-0					

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code
 - §161.03 – District R-A, Residential-Agricultural
 - §161.19 – NS-G, Neighborhood Services - General
- Request Letter
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map

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
Unit 46	Short-term rentals

(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 (½)
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(D) *Bulk and Area Regulations.*

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

(E) *Setback Requirements.*

Front	Side	Rear
35 feet	20 feet	35 feet

(F) *Height Requirements.* There shall be no maximum height limits in the R-A District, provided, however, if a building exceeds the height of one (1) story, the portion of the building over one (1) story shall have an additional setback from any boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over one (1) story shall be equal to the difference between the total height of that portion of the building and one (1) story.

(G) *Building area.* None.

161.19 NS-G, Neighborhood Services - General

(A) *Purpose.* The Neighborhood Services, General district is designed to serve as a mixed use area of medium intensity. Neighborhood Services, General promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control the Neighborhood Services district is a residential zone.

(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 (3) and four (4) family dwellings
Unit 12b	General business
Unit 24	Home occupations
Unit 40	Sidewalk cafes
Unit 41	Accessory dwelling units
Unit 44	Cluster housing development
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(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 13	Eating places
Unit 16	Shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 36	Wireless communication facilities
Unit 45	Small scale production

(C) *Density.* Eighteen (18) or less per acre.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

All dwellings	35 feet
All other uses	None

(2) *Lot Area Minimum.*

Single-family	4,000 square feet
Two (2) family or more	3,000 square feet per dwelling unit
All other uses	None

(E) *Setback regulations.*

Front	Side	Side-Zero Lot Line*	Rear	Rear when contiguous to a single-family residential district
-------	------	---------------------	------	--

A build-to zone that is located between the front property line and a line 25 feet from the front property line.	5 feet	A setback of less than 5 feet (zero lot line) is permitted on one interior side, provided a maintenance agreement is filed**. The remaining side setback(s) shall be 10 feet.	None	15 feet
--	--------	---	------	---------

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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(G) *Minimum Buildable Street Frontage.* 50% of the lot width.

Dustin Davis
Owner
R&D Property Holdings, LLC
22014 Tower Rd. Elkins, AR
Dustin@RDPSAR.com
479-200-6535

16 April 2024

Fayetteville Planning Department
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

Re: Rezoning Request for Parcel 765-16143-000

I am writing to formally submit a rezoning request on behalf of R&D Holdings, LLC. My request pertains to the property located on the NE Corner of W. Nicole and N Double Springs Rd, identified as Parcel 765-16143-000.

Parcel 765-16143-000: 951 N Double Springs Rd.

- Complete legal description provided separately.
- 0.56 acres
- Current zoning: R-A
- Requested zoning: NS-G

Current Adjacencies:

- North: C-1/R-A - Undeveloped
- South: R-A - Single Family
- East: R-O/C-2 - Duplexes and Retail Office Space
- West: RMF-24 - Duplexes

Statement of Compatibility:

The parcel is immediately adjacent to Commercial and Residential Office zoning. With this location being in a "Tier 3 Center" and will provide a fluid transition from the commercial area to residential. It is located on a main thoroughfare with higher traffic count and has road frontage on 2 sides making it ideal for a small office. The current development of the parcel consists of a residential structure designed to be a duplex and approximately 55 years old. The property owner's intention is not to redevelop this parcel at this time, but rather to renovate the existing structure and have flexibility in how it may be used during its remaining lifecycle. The requested zoning would allow for service-oriented uses or

development if needed in the future while providing a fluid transition from higher intensity use to residential areas.

Statement of Adverse Effect or Conflict with Surrounding Land Uses:

The permitted uses in NS-G zoning are similar to those permitted elsewhere throughout the existing neighborhood; however, it does contrast with some of the surrounding R-A zoning. The new NS-G could possibly increase traffic slightly but should be limited to the main thoroughfare and not intruding on any of the nearby neighborhoods.

See Additional Exhibits:

- Zoning Map
- Parcel Map
- Extended Legal Description
- Consent of Owner Form

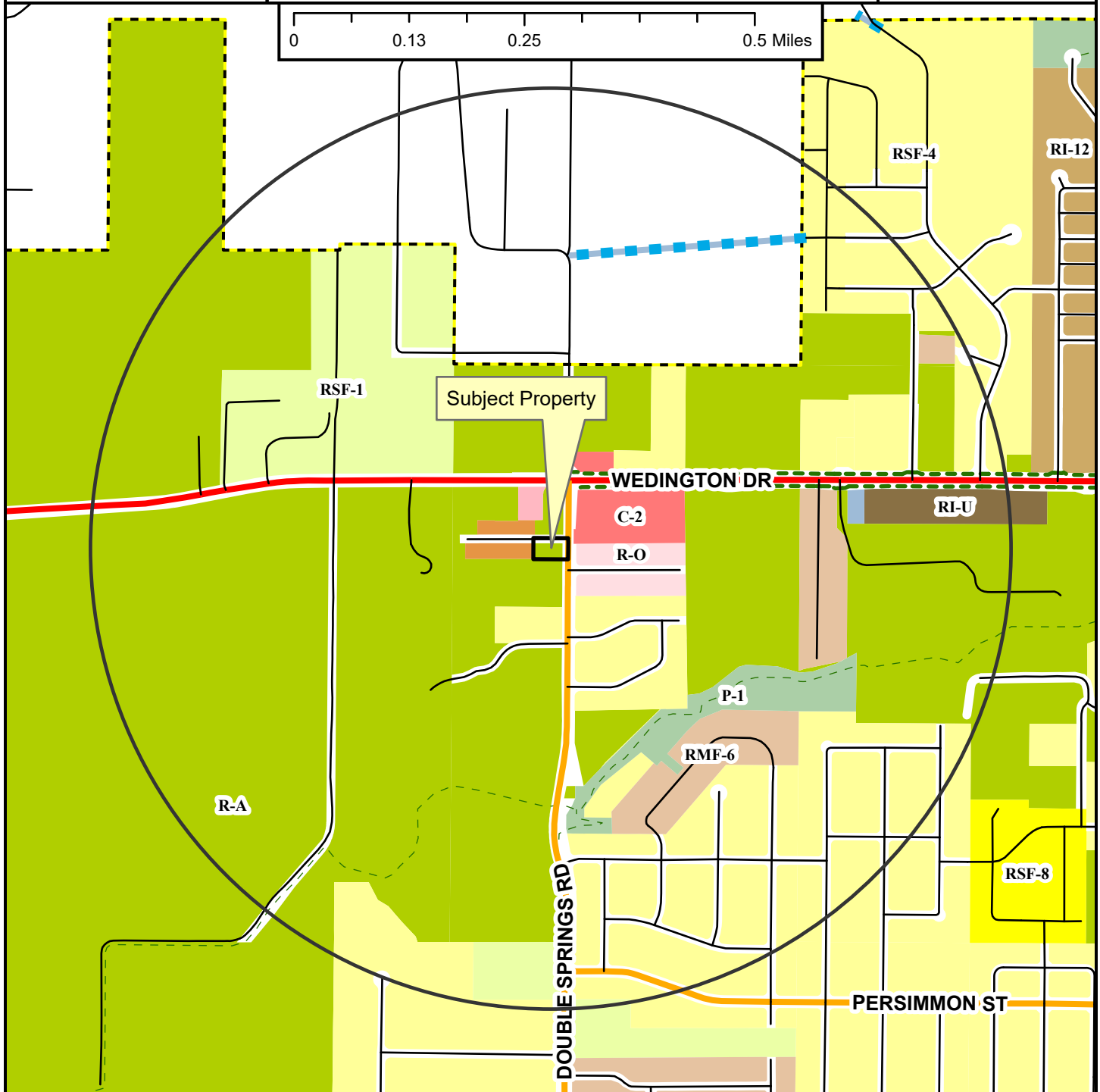
I appreciate your attention to this matter and look forward to discussing the rezoning request further. If additional information or clarification is needed, please do not hesitate to contact me. Thank you for your consideration.

Dustin Davis
Owner
R&D Property Holdings, LLC

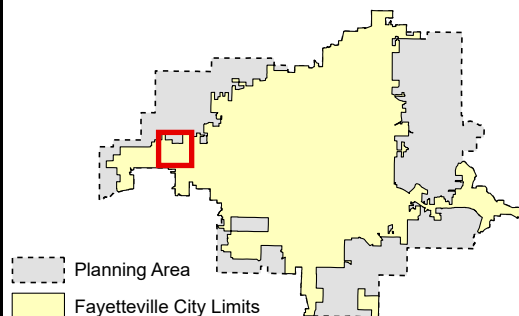
RZN-2024-0022

951 N. DOUBLE SPRINGS RD

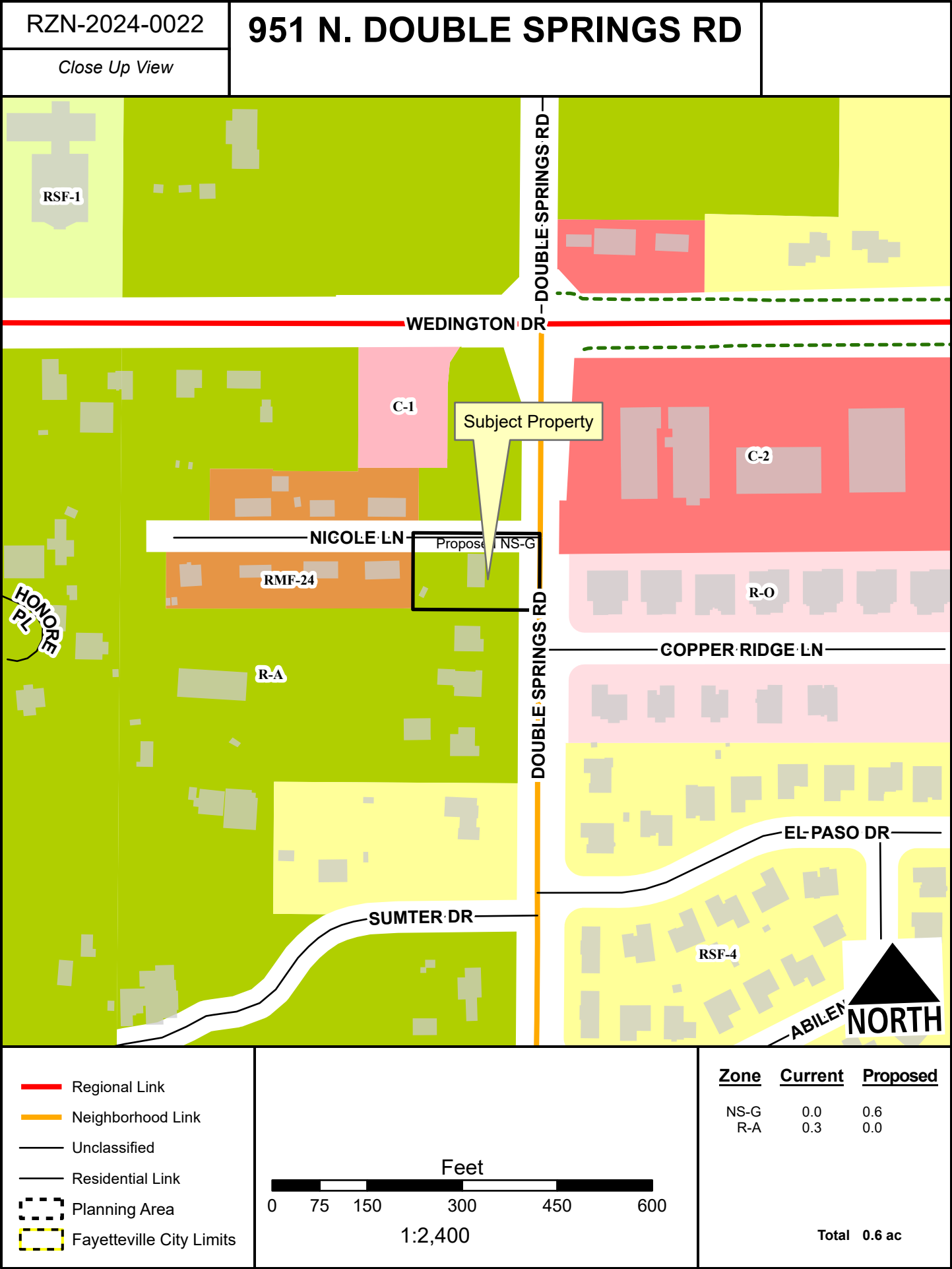
One Mile View



-  Regional Link
-  Neighborhood Link
-  Unclassified
-  Alley
-  Residential Link
-  Planned Residential Link
-  Shared-Use Paved Trail
-  Trail (Proposed)
-  Fayetteville City Limits
-  Planning Area



-
- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
 - NS-G
 - RI-U
 - RI-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-1
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
 - RESIDENTIAL MULTI-FAMILY**
 - RMF-6
 - RMF-12
 - RMF-18
 - RMF-24
 - RMF-40
 - INDUSTRIAL**
 - I-1 Heavy Commercial and Light Industrial
 - EXTRACTION**
 - I-2 General Industrial
 - E-1
 - COMMERCIAL**
 - Residential-Office
 - C-1
 - C-2
 - C-3
 - FORM BASED DISTRICTS**
 - Redowntown Core
 - Urban Thoroughfare
 - Main Street Center
 - Downtown General
 - Community Services
 - Neighborhood Services
 - Neighborhood Conservation
 - PLANNED ZONING DISTRICTS**
 - Commercial, Industrial, Residential
 - INSTITUTIONAL**
 - P-1



RZN-2024-0022
<i>Current Land Use</i>

951 N. DOUBLE SPRINGS RD



An aerial photograph of a residential property. The main feature is a large, light-colored house with a dark, multi-gabled roof. To the left of the main house is a smaller, single-story building with a red roof. The property is surrounded by trees, some of which are bare, suggesting a cooler season. A driveway leads to the buildings. The property is bordered by other lots, some of which contain other houses and trees.

Commercial, Undeveloped,
and Single-Family Residential

Subject Property

Mixed-Residential
and Commercial

Commercial, Two-Family Residential,
and Single-Family Residential

Single-Family Residential

-  Regional Link
-  Neighborhood Link
-  Unclassified
-  Residential Link
-  Trail (Proposed)
-  Planning Area
-  Fayetteville City Limits

Feet

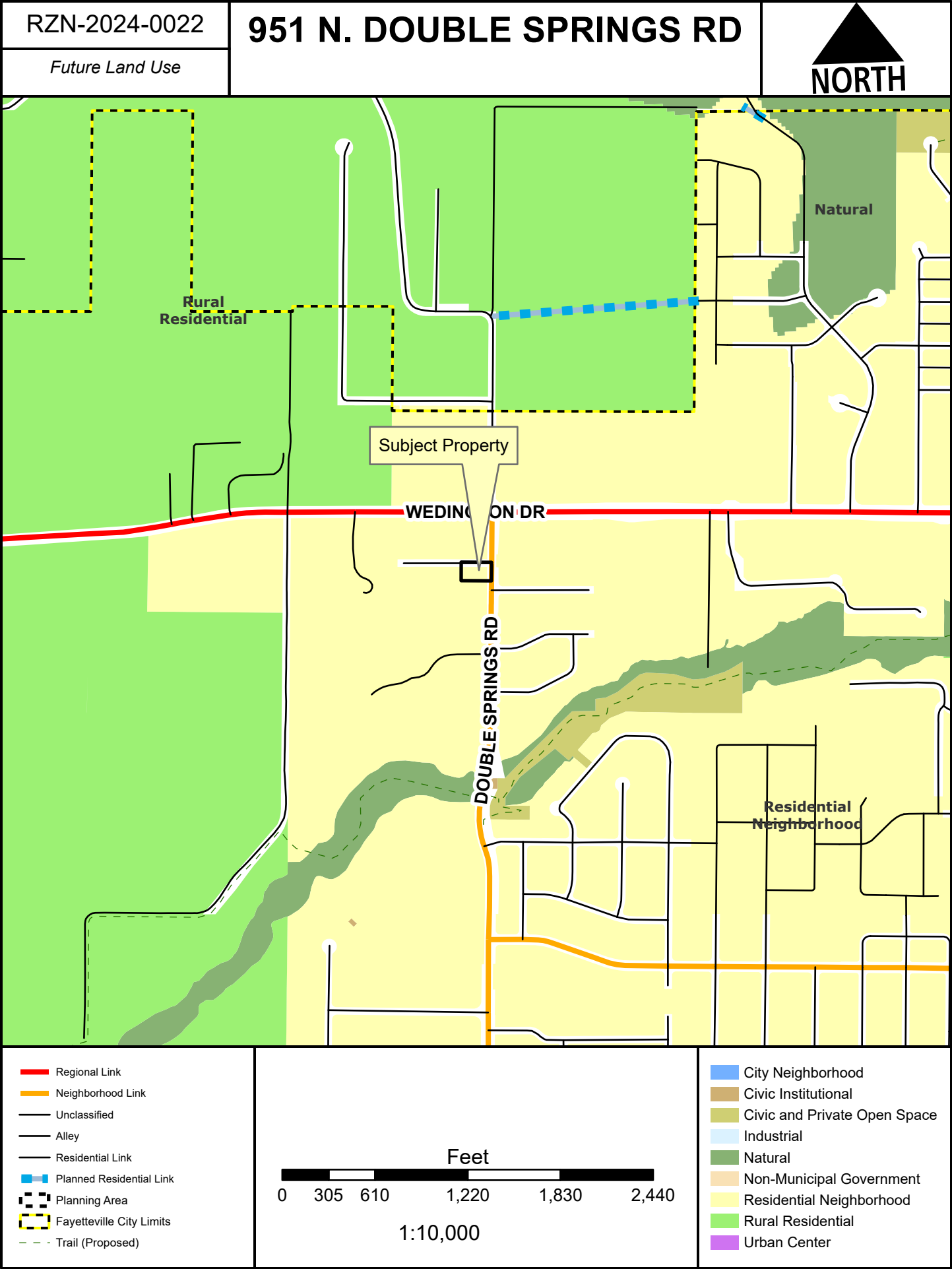
0 112.5 225 450 675 900

1:3,600

FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway

 100-Year Floodplain
 Floodway





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Gretchen Harrison, Senior Planner

SUBJECT: **RZN-2024-0023: Rezoning (1000 S. FUTRALL DR./ADROIS HOSPITALITY LLC, 559): Submitted by BRANDON SCALLION for property located at 1000 S. FUTRALL DR. in WARD 1. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.75 acres. The request is to rezone the property to CS, COMMUNITY SERVICES.**

RECOMMENDATION:

City planning staff and the Planning Commission recommend approval of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property is located southeast of the intersection of Futrall Drive and Martin Luther King Jr. Boulevard. The property contains one parcel totaling 1.75 acres which is developed with two motel buildings that were constructed in 1981, according to Washington County records, and zoned C-2, Thoroughfare Commercial.

Request: The request is to rezone the subject property from C-2, Thoroughfare Commercial, to CS, Community Services.

Land Use Compatibility: Staff finds the requested rezoning to be compatible with surrounding land uses. The property is located near the intersection of Futrall Drive and Martin Luther King Jr. Boulevard in an area that includes a variety of land uses and is well served by city services. The property's existing zoning, C-2, Thoroughfare Commercial, is designed to encourage the grouping of commercial enterprises that cater to highway travelers, while the proposed zoning, CS, Community Services, is intended to encourage adaptable mixed-use centers along commercial corridors. While C-2 zoning provides an urban form setback option, development in that zoning district typically follows a more traditional auto-oriented setback requirement with parking in front of structures, whereas CS requires an urban form setback with buildings addressing the street. Since the surrounding area is primarily developed with commercial buildings that are set far back from the street, staff finds that a rezoning to CS could encourage a different development pattern which would allow for the insertion of complimentary residential uses and require buildings to be closer to the street and sidewalk network. Residential uses are currently permitted in the C-2 zoning district, though only as an accessory use. A rezoning to CS would allow all residential uses by right. The proposed rezoning would also make the current use of the property as a motel a conditional use.

Land Use Plan Analysis: Staff finds the applicant's request to be consistent with the City's adopted land use plans. City Plan 2040's Future Land Use Map designates this property as an Urban Center Area. Those areas contain the most intense and dense development patterns in the city and allow for the tallest and greatest variety of buildings. While CS is somewhat aligned with that designation, staff finds that a more intense mixed-use district, such as UT, Urban Thoroughfare, may be more compatible since it would allow for more intense and dense development. Nevertheless, staff is still supportive of the applicant's request to rezone the property to CS since that rezoning would be aligned with several of the goals stated in City Plan 2040. A rezoning from C-2 to CS may encourage infill, discourage sprawl, and help grow a livable transportation network by allowing for mixed-use development in an area that is well served by city services, in proximity to trails and bus routes, and near a variety of existing land uses.

City Plan 2040 Infill Matrix: City Plan 2040's Infill Matrix indicates a score of 9 for this site. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, located at 990 S. Hollywood Ave.)
- Near Sewer Main (six-inch main on site)
- Near Water Main (six-inch main on site)
- Near Public School (Ramay Junior High School)
- Near U of A Main Campus
- Near City Park (Centennial Park and Finger Park)
- Near Paved Trail (Town Branch Trail and Tsa-La-Gi Trail)
- Near Razorback Bus Stop (Route 44 and Route 48)
- Appropriate Future Land Use (Urban Center Area)

DISCUSSION:

At the May 28, 2024, Planning Commission meeting, a vote of 8-0-0 forwarded this request to City Council with a recommendation of approval. Commissioner Werner made the motion and Commissioner Madden seconded it. Commissioner Werner asked staff how they distinguish between apartments and hotels and staff explained how they are subject to different building code and land use regulations. Staff also provided clarification on the city's regulations for nonconforming land uses and structures in response to a question from Commissioner Castin. No member of the public commented on this item at the meeting.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Planning Commission Staff Report (#6)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-161

**RZN-2024-0023: Rezoning (1000 S. FUTRALL DR./ADROIS HOSPITALITY LLC, 559):
Submitted by BRANDON SCALLION for property located at 1000 S. FUTRALL DR. in WARD
1. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately
1.75 acres. The request is to rezone the property to CS, COMMUNITY SERVICES.**

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-23 FOR APPROXIMATELY 1.75 ACRES LOCATED AT 1000 SOUTH FUTRALL DRIVE IN WARD 1 FROM C-2, THOROUGHFARE COMMERCIAL TO CS, COMMUNITY SERVICES

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 property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from C-2, Thoroughfare Commercial to CS, Community Services.

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.

City of Fayetteville Staff Review Form

2024-161

Item ID

6/18/2024

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

Jonathan Curth

5/31/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0023: Rezoning (1000 S. FUTRALL DR./ADROIS HOSPITALITY LLC, 559): Submitted by BRANDON SCALLION for property located at 1000 S. FUTRALL DR. in WARD 1. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.75 acres. The request is to rezone the property to CS, COMMUNITY SERVICES.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Total Amended Budget

\$ -

Expenses (Actual+Encum)

\$ -

Available Budget

\$ -

Does item have a direct cost? No

Item Cost

\$ -

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ -

V20221130

Purchase Order Number: _____

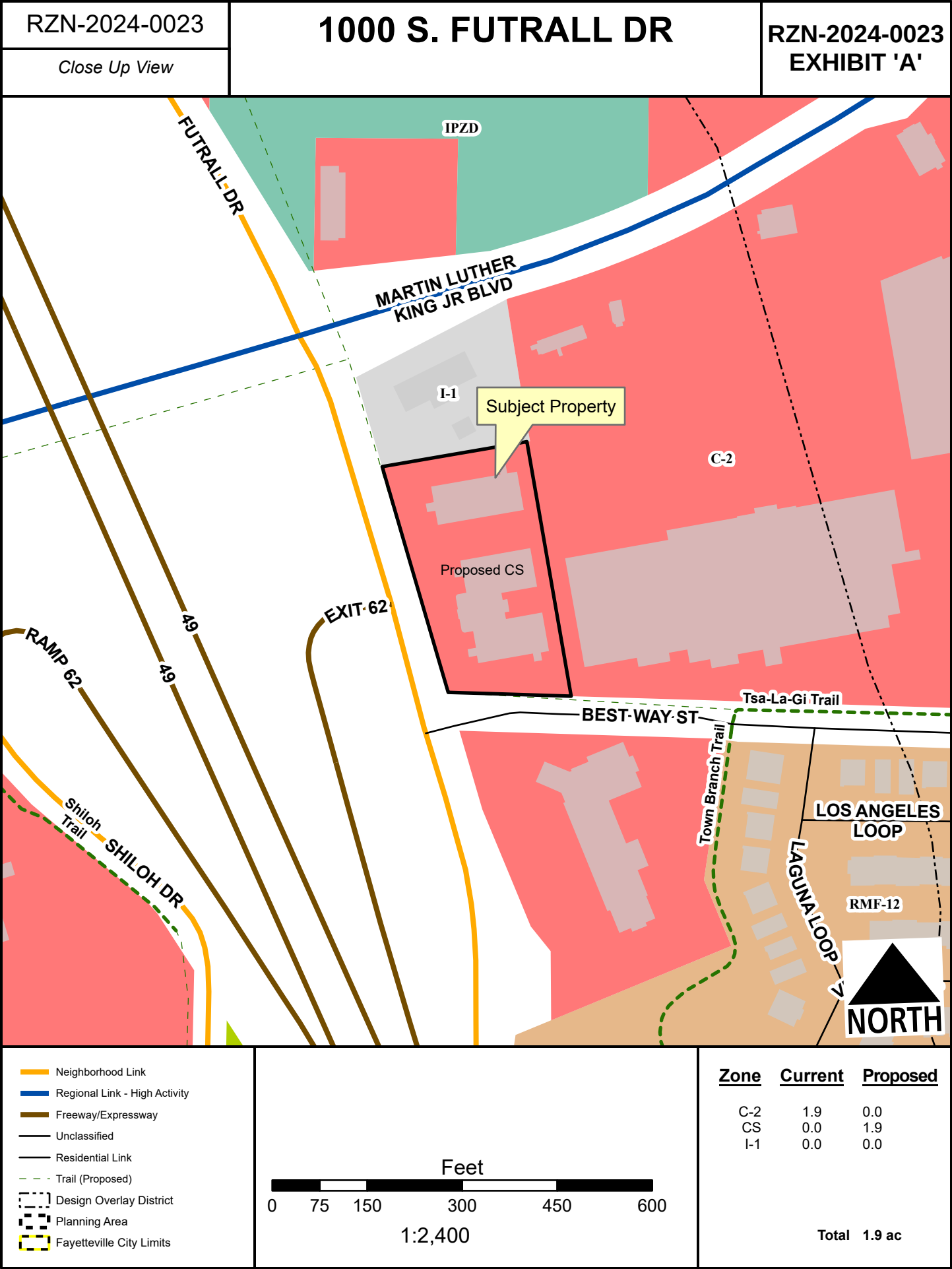
Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



Legal Description – Parcel #765-05364-000

PT LOT 3 BLOCK 1 FURTHER DESCRIBED FROM 2021-47182 AS: Part of Lot 3, Block I, Fayetteville Center Subdivision, Fayetteville, Washington County, Arkansas, being further described as follows, to-wit: Beginning at a point which is N89°52'W 728.96 feet from the Southeast corner of the NW of the NW of Section 20, Township 16 North, Range 30 West; thence N89°52'W 196.09 feet; thence N18°07'27"W 370.96 feet; thence N78°38"E 234.73 feet; thence S11°31'07"E 407.48 feet to the point of beginning. LESS AND EXCEPT The East 20 feet thereof.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Senior Planner

MEETING DATE: May 28, 2024 (updated with results)

SUBJECT: **RZN-2024-0023: Rezoning (1000 S. FUTRALL DR./ADROIS HOSPITALITY LLC, 559):** Submitted by BRANDON SCALLION for property located at 1000 S. FUTRALL DR. The property is zoned C-2, THOROUGHFARE COMMERCIAL and contains approximately 1.75 acres. The request is to rezone the property to CS, COMMUNITY SERVICES.

RECOMMENDATION:

Staff recommends forwarding **RZN-2024-0023** to the City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0023** to the City Council with a recommendation of approval."*

BACKGROUND:

The subject property is located southeast of the intersection of Futrall Drive and Martin Luther King Jr. Boulevard. The property contains one parcel totaling 1.75 acres which is developed with two motel buildings that were constructed in 1981, according to Washington County records, and zoned C-2, Thoroughfare Commercial. Surrounding land uses and zoning are depicted below in *Table 1*.

Table 1:
Surrounding Land Uses and Zoning

Direction	Land Use	Zoning
North	Gas Station	I-1, Heavy Commercial and Light Industrial
South	Motel	C-2, Thoroughfare Commercial
East	Mixed Commercial	C-2, Thoroughfare Commercial
West	Interstate 49 Mixed Commercial	C-2, Thoroughfare Commercial

Request: The request is to rezone the subject property from C-2, Thoroughfare Commercial, to CS, Community Services.

Public Comment: To date, staff has not received any public comment on this item.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW:

Streets: The subject property has frontage along Futrall Drive and Best Way Street. Futrall Drive is a fully improved Neighborhood Link Street with asphalt paving, curb,

gutter, and sidewalk along the east side of the street. Best Way Street is a partially improved Residential Link Street with asphalt paving, curb, gutter, and sidewalk along the south side of the street. Any street improvements required in this area would be determined at the time of development proposal.

Water: Public water is available to the subject property. An existing six-inch water main is present on the east side of the subject property.

Sewer: Sanitary sewer is available to the subject property. An existing six-inch sewer main is present in the center of the subject property.

Drainage: No portion of the subject property lies within the Hillside/Hilltop Overlay District or a FEMA-designated floodplain and no protected streams or hydric soils are present. Any improvements or requirements for drainage will be determined at the time of development submittal.

Fire: Station 6, located at 990 S. Hollywood Ave., protects this site. The property is located approximately 0.3 miles from the fire station with an anticipated drive time of approximately one minute using existing streets. The anticipated response time would be approximately 3.2 minutes. Fire Department response time is calculated based on the drive time plus one minute for dispatch and 1.2 minutes for turn-out time. Within the city limits, the Fayetteville Fire Department has a response time goal of six minutes for an engine and eight minutes for a ladder truck. Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development.

Police: The Police Department did not comment on this request.

Tree Preservation:

The proposed zoning district, CS, Community Services, requires **20% minimum canopy preservation**. The current zoning district, C-2, Thoroughfare Commercial, requires **15% minimum canopy preservation**.

CITY PLAN 2040 FUTURE LAND USE PLAN: City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **Urban Center Area**.

Urban Center Areas contain the most intense and dense development patterns within the City and allow for the tallest and greatest variety of buildings. Urban Center accommodates rowhouses, apartments, local and regional retail, hotels, clean technology industries and entertainment uses. These areas are typified by their location adjacent to major thoroughfares with high visibility. Although Urban Center Areas recognize the conventional big box and strip retail centers existing along major arterials, it is expected that vacant properties will be developed into traditional mixed-use centers, allowing people to live, work and shop in the same area. Additionally, infill of underperforming or undervalued existing big box and strip centers should be strongly encouraged since there is a greater return on investment for redevelopment of these areas that have existing public infrastructure such as streets, sidewalks, trails, water, sewer and parklands.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of **9** for this site with a weighted score of **11**. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, located at 990 S. Hollywood Ave.)

- Near Sewer Main (six-inch main on site)
- Near Water Main (six-inch main on site)
- Near Public School (Ramay Junior High School)
- Near U of A Main Campus
- Near City Park (Centennial Park and Finger Park)
- Near Paved Trail (Town Branch Trail and Tsa-La-Gi Trail)
- Near Razorback Bus Stop (Route 44 and Route 48)
- Appropriate Future Land Use (Urban Center Area)

FINDINGS OF THE STAFF

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

Finding: ***Land Use Compatibility:*** Staff finds the requested rezoning to be compatible with surrounding land uses. The property is located near the intersection of Futrall Drive and Martin Luther King Jr. Boulevard in an area that contains a variety of land uses and is well served by city services. The property's existing zoning, C-2, Thoroughfare Commercial, is designed to encourage the grouping of commercial enterprises that cater to highway travelers while the proposed zoning, CS, Community Services, is intended to encourage adaptable mixed-use centers along commercial corridors. While C-2 zoning provides an urban form setback option, development in that zoning district typically follows a more traditional auto-oriented setback requirement with parking in front of structures, whereas CS requires an urban form setback with buildings addressing the street. Since the surrounding area is primarily developed with commercial buildings that are set far back from the street, staff finds that a rezoning to CS could encourage a different development pattern which would allow for the insertion of more residential uses and require buildings to be closer to the street. Residential uses are currently permitted in the C-2 zoning district though only as an accessory use. A rezoning to CS would allow all residential uses by right. The proposed rezoning would also make the current use of the property as a motel a conditional use.

Land Use Plan Analysis: Staff finds the applicant's request to be consistent with the City's adopted land use plans. City Plan 2040's Future Land Use Map designates this property as Urban Center Area. Those areas contain the most intense and dense development patterns in the City and allow for the tallest and greatest variety of buildings. While CS is somewhat aligned with that designation, staff finds that a more intense mixed-use district, such as UT, Urban Thoroughfare, may be more compatible since it would allow for more intense and dense development. Nevertheless, staff is still supportive of the applicant's request to rezone the property to CS. since that rezoning would be aligned with several of the goals stated in City Plan 2040. A rezoning from C-2 to CS may encourage infill, discourage sprawl, and help grow a livable transportation network by allowing for mixed-use development in an area that is well served by city services, in close proximity to trails and bus routes, and near a variety of existing land uses.

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

Finding: Staff finds that there is sufficient justification for rezoning the property from C-2 to CS since the proposed rezoning would be consistent with the property's future land use designation as Urban Center Area and support several goals of City Plan 2040.

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

Finding: A rezoning from C-2 to CS has the potential to increase vehicular traffic in the area when considering that CS would allow for more dense residential development. However, staff finds that the property's proximity to nonresidential uses, bus routes, and public trails may help reduce the number of vehicle trips generated by future development and limit impacts on vehicular traffic congestion and danger. The Arkansas Department of Transportation is in the process of finalizing plans for improvements to the interchange of I-49 and Martin Luther King Jr. Boulevard which would include a trail connection that would tie together the Tsa-La-Gi Trail and Shiloh Trail. That future trail connection would further improve connectivity for pedestrians and cyclists between the subject property and nonresidential uses to the west of I-49.

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 C-2 to CS has the potential to alter the population density since CS would allow for increased residential development. Given the property's proximity to public streets, trails, water, sewer, and schools, staff finds that the proposed rezoning is not likely to undesirably increase the load on public services. Any necessary upgrades or improvements to existing infrastructure would be determined at the time of development. Fayetteville Public Schools did not comment on this request.

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

RECOMMENDATION: Planning staff recommends forwarding RZN-2024-0023 to the City Council with a recommendation of approval.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>May 28, 2024</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: Werner		with a recommendation of approval	
Second: Madden			
Vote: 8-0-0			

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code
 - §161.22 Community Services
 - §161.23 District C-2, Thoroughfare Commercial
- Request Letter
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map

161.22 Community Services

(A) *Purpose.* The Community Services District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 40	Sidewalk Cafes
Unit 41	Accessory dwellings
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Dwelling	18 feet
All others	None

(2) *Lot Area Minimum.* None.

(E) *Setback regulations.*

Front:	A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	5 stories
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(G) *Minimum Buildable Street Frontage.* 50% of the lot width.

(Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5735, 1-20-15; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5921 , §1, 11-1-16; Ord. No. 5945 , §§5, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6223 , §1, 9-3-19; Ord. No. 6409 §1, 2-2-21; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21; Ord. No. 6497 , §1, 10-19-21)

161.23 District C-2, Thoroughfare Commercial

(A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers. The intent of this district is to allow administrative approval if the developer decides to use urban form, in compliance with the build-to zone and minimum buildable street frontage as specified herein.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 25	Offices, studios, and related services
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor store
Unit 40	Sidewalk Cafes
Unit 44	Cluster Housing Development
Unit 45	Small scale production
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 32	Sexually oriented business
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and Area Regulations.* None.

(E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	None
Side, when contiguous to a residential district	15 feet
Rear	20 feet

Urban Form Setback Regulations:

Front	A build-to zone that is located between 10 feet and a line 25 feet from the front property line
Side and rear	None
Side or rear, when contiguous to a single-family residential district	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	6 stories*
-------------------------	------------

* If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from side boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot, the area occupied by all buildings shall not exceed 60% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

(H) Urban form minimum buildable street frontage: 50% of the lot width.

(Code 1965, App. A., Art. 5(VI); Ord. No. 1833, 11-1-71; Ord. No. 2351, 6-2-77; Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.036; Ord. No. 4034, §3, 4, 4-15-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4727, 7-19-05; Ord. No. 4992, 3-06-07; Ord. No. 5028, 6-19-07; Ord. No. 5195, 11-6-08; Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5353, 9-7-10; Ord. No. 5462, 12-6-11; Ord. No. 5592, 6-18-13; Ord. No. 5664, 2-18-14; Ord. No. 5735, 1-20-15; Ord. No. 5800, §1(Exh. A), 10-6-15; Ord. No. 5921, §1, 11-1-16; Ord. No. 5945, §§5, 7, 1-17-17; Ord. No. 6015, §1(Exh. A), 11-21-17; Ord. No. 6164, §§1, 6, 7, 4-2-19; Ord. No. 6223, §1, 9-3-19; Ord. No. 6245, §2, 10-15-19; Ord. No. 6521, §5, 1-18-22)

Brandon Scallion
Owner/Managing Member
Countdown LLC
273 Trout Water Drive, Jordan, AR 72519
bscalli@gmail.com
870-692-6430

April 15, 2024

Fayetteville Planning Department
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

Re: Rezoning Request for Parcel 765-05364-000

I am writing to formally submit a rezoning request for the parcel listed above on behalf of Countdown LLC. We currently have the property under contract to buy. The property is currently a Quality Inn Motel located at 1000 S. Futrall in Fayetteville, AR.

Parcel 765-05364-000: 1000 S. Futrall Dr

- Complete legal description provided separately
- 1.75 Acres
- Current Zoning – C2
- Requested Zoning – CS

Current Adjacencies:

- North – I1
- South – C2
- East – C2
- West – Interstate 49

Statement of Compatibility

The parcel is near residential zoned parcels, CS zoned parcels, C2 zoned parcels. The proposed land use for this parcel is affordable multifamily. The property is currently a 105 unit motel with a pool. The current average occupancy rate for the motel is 70%.

Statement of Adverse Effect or Conflict with Surrounding Land Use:

The main adverse effect may be a slight increase in local traffic. This is mitigated by the availability of green transit nearby. Public transportation is 0.15 miles away and the Greenway Bike Trail is roughly 100 yards from the property in question.

See Additional Exhibits:

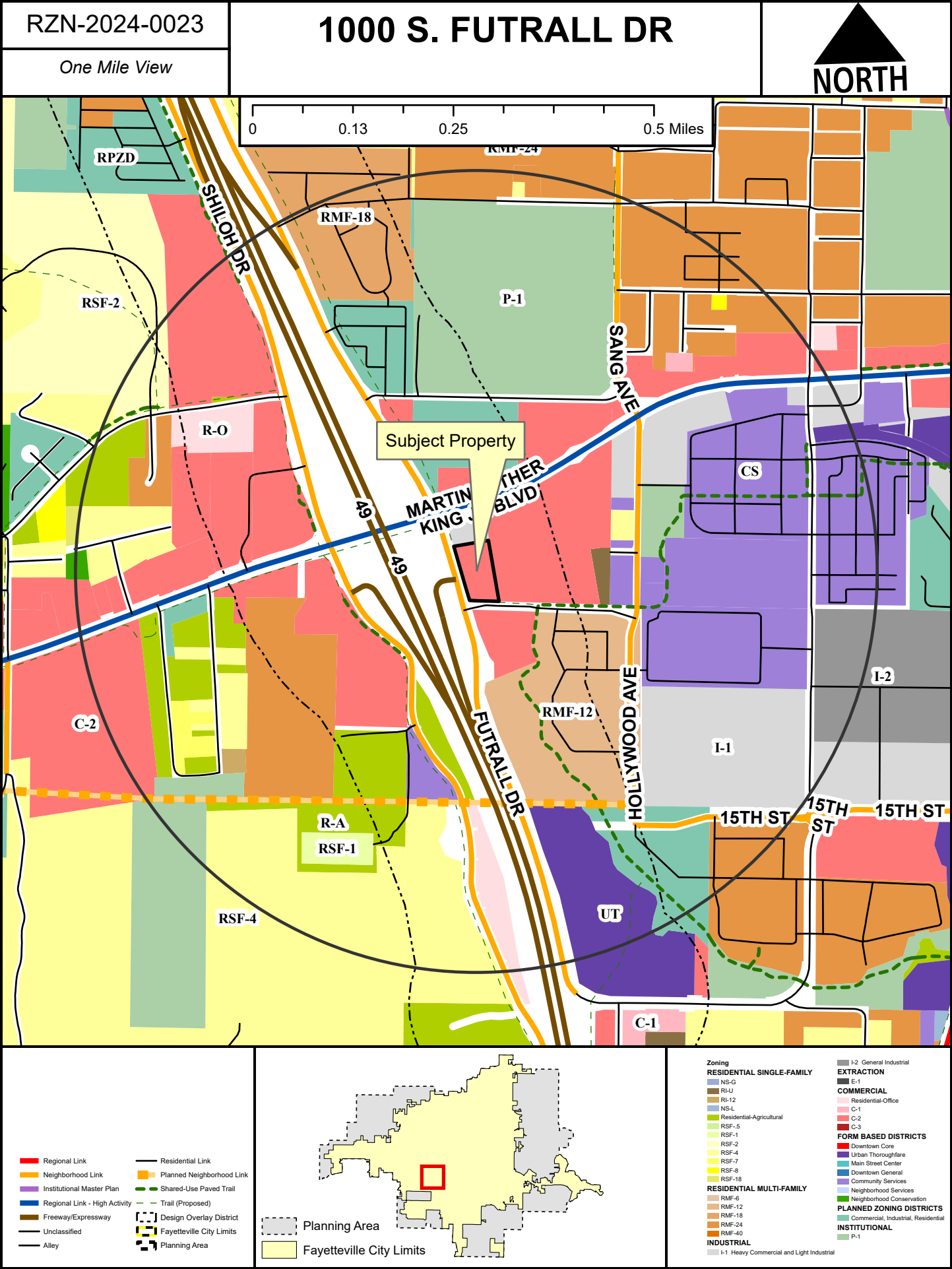
- Consent Owner Form
- Purchase Contract
- Extended Legal Description (Word Format)

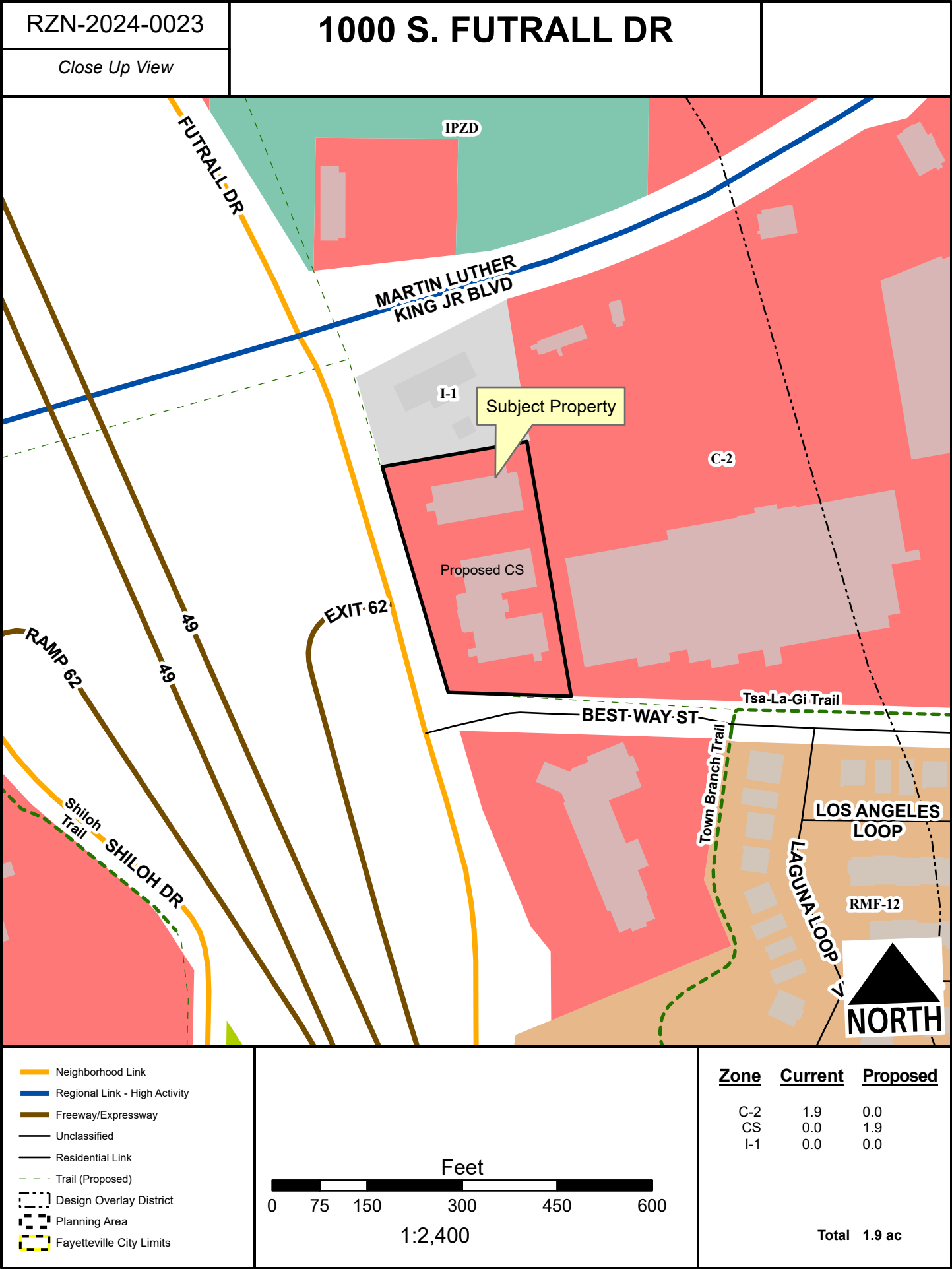
I appreciate your attention to this matter and look forward to discussing the rezoning request further. If additional information or clarification is needed, please do not hesitate to contact me. Thank you for your time and consideration.

Brandon Scallion

Owner/Managing Member

Countdown LLC





RZN-2024-0023

1000 S. FUTRALL DR

Current Land Use

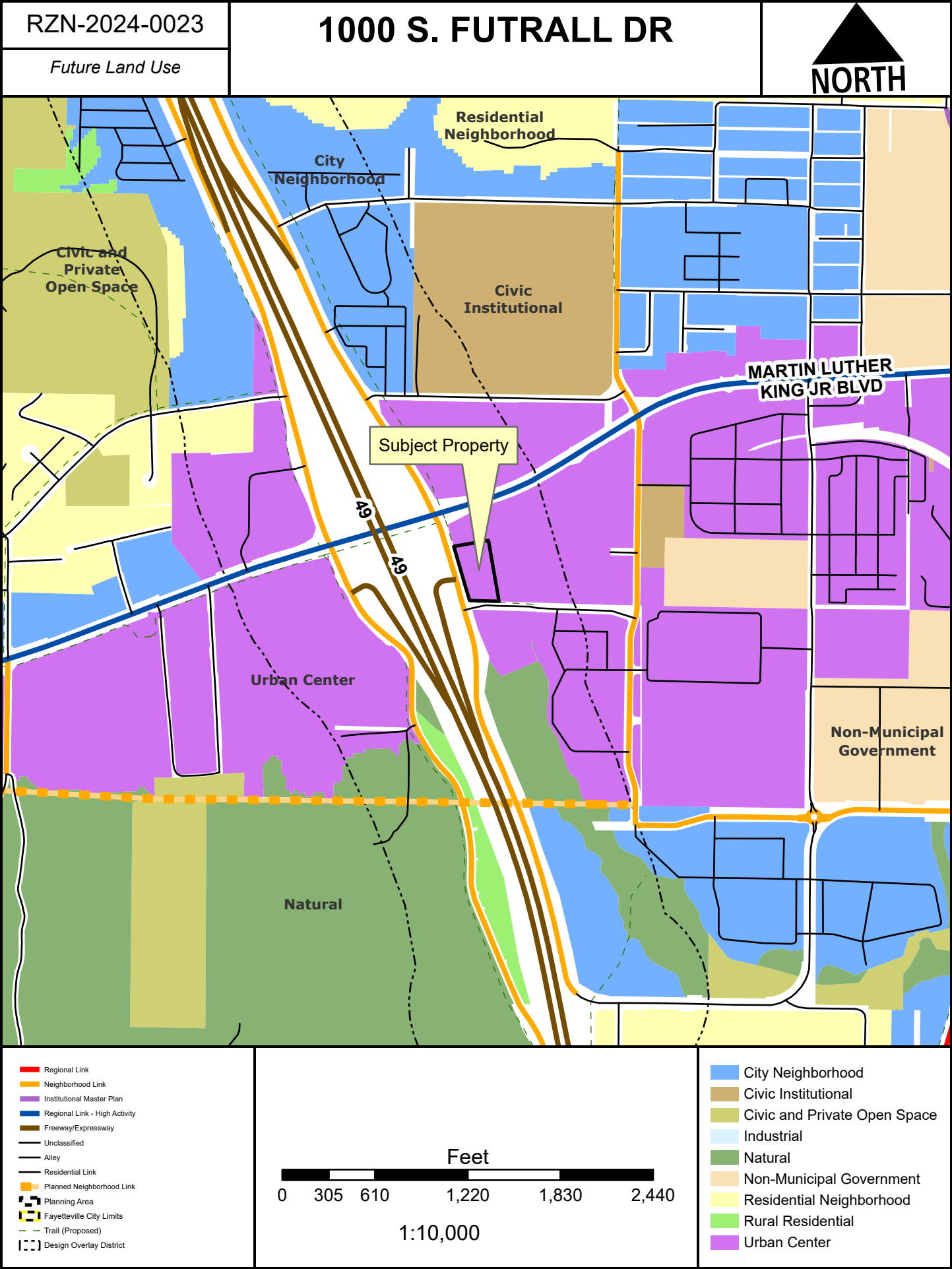


- Neighborhood Link
- Regional Link - High Activity
- Freeway/Expressway
- Unclassified
- Residential Link
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits
- Design Overlay District



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway





MEETING OF JUNE 18, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director

FROM: Jessica Masters, Development Review Manager

SUBJECT: **Appeal: CUP-2024-0017: Conditional Use Permit (10 S. PALMER AVE/BEYKIRCH, 521): Submitted by KEY ARCHITECTURE INC for property located at 10 S. PALMER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.40 acres. The request is to use the residence for a cultural and recreational facility for international student housing.**

RECOMMENDATION:

City Planning staff and the Planning Commission recommend approval of a conditional use permit for a group home at the subject property as described and shown below.

BACKGROUND:

The subject property is in the University Heights neighborhood at 10 S. Palmer Avenue, which is approximately 800 feet west of the University of Arkansas' John McDonnell Field and situated at the southeast corner of W. Center Street and S. Palmer Avenue. The property is developed with an approximately 3,000 sq. ft. single-family home that was built in 1966. The current property owner previously requested a conditional use permit for the home to be used as a Type 2 short-term rental, but that request was denied by Planning Commission and subsequently the City Council on appeal (CUP-2023-0073).

Request: Councilmembers Bunch, Moore, and Wiederkehr have sponsored a resident appeal of the Planning Commission approval for a conditional use permit allowing a group home facility for graduate students and additional supportive services through the International Student Christian Association (ISCA). Staff determined that this use classifies as Use Unit 4, a cultural and recreational facility, in the Unified Development Code, which includes uses such as dormitories, institutional uses, care facilities.

Public Comment: Staff received comments in opposition to the request, as well as inquiries from the public with no direct opposition or support of the proposal. All written comments are included in the attachments. Eleven members of the public also spoke at the Planning Commission meeting, with three members in favor and eight in opposition.

Findings: Staff finds that granting the requested conditional use permit will not likely negatively affect the public interest. Cultural and recreational facilities are included as a conditional use in the RSF-4 zoning district because they have the potential of generating traffic, noise, or other disturbance beyond what is typically expected in a single-family district. One thing that staff takes into consideration on a balance of recommendations for conditional uses is the aspect of scale, visual, and traffic impacts on the surroundings. Given the applicant's proposal, staff finds that the property, though with the possibility to house up to six

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

students at a time, is likely to function primarily as a residence under one household, and secondly as a traffic-generating facility for the use of assembly and gathering. The residence, even with a proposed addition, is of a similar size and scale to the surrounding neighborhood. Further, staff finds that the proposal is in line with City Plan 2024 goals by providing an alternative housing type, and that the location was reasonably situated as a transition between the higher intensity University-related uses to the east and the single-family residential nature of the neighborhood. Staff recommended and Planning Commission approved conditions of approval limiting the number of vehicles to be parked on the property to a maximum of four, requirements that the structure meet relevant International Building Code requirements for assembly space, a maximum of six full-time residents, and specific limits on the number of outside guests and events that could be held at the property throughout the year. Full staff report can be found attached to this packet.

DISCUSSION:

At the May 13, 2024 Planning Commission meeting, a motion to approve by Commissioner Cabe was seconded by Commissioner McGetrick, and a vote of 6-1-0 approved the applicant's request; Commissioner Madden voted in opposition. Commissioners discussed the item at length, directing questions at both the applicant and staff to clarify the use and how it interfaced with the definition of family in zoning ordinance, the organizational structure, the property management plan, and whether anyone from the organization would be living on-site full-time. Commissioners ultimately found in favor of the request, finding it to be compatible with the surrounding neighborhood, and with all conditions as recommended by staff. 11 members of the public spoke at the meeting, with three in favor and eight in opposition. Those in favor of the request supported the applicant's mission to house international students. Those in opposition to the request had concerns regarding the compatibility with the single-family residential character of the neighborhood, the organization's registration with the Arkansas Secretary of State and its 501(c)(3) status, increased traffic, and concerns about emergency access on W. Center Street and S. Palmer Avenue.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: Appeal Request Letter with Council Member Sponsors (#3), Exhibit A (#4), Planning Commission Staff Report (#5), Palmer Bus Diagram 1 (#6), Palmer Bus Route Diagram 2 (#7), Palmer Parking Diagram 1 (#8), Palmer Parking Diagram 2 (#9), Palmer Proximity Diagram (#10), Palmer Zoning Diagram (#11), Charlie Cross Support Letter (#12), Clark Nolan Support Letter (#13), John Adam Support Letter (#14), Lyndy Lindsey Support Letter (#15), Mark Pryor Support Letter (#16), John & Jane Ray Support Letter (#17), ISCA Article Of Incorporation (#18)

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2024-166

Appeal: CUP-2024-0017: Conditional Use Permit (10 S. PALMER AVE/BEYKIRCH, 521): Submitted by KEY ARCHITECTURE INC for property located at 10 S. PALMER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.40 acres. The request is to use the residence for a cultural and recreational facility for international student housing.

A RESOLUTION TO GRANT THE APPEAL OF COUNCIL MEMBERS SARAH BUNCH, SARAH MOORE, AND MIKE WIEDERKEHR AND DENY CONDITIONAL USE PERMIT CUP 2024-017 FOR A GROUP HOME FACILITY FOR GRADUATE STUDENTS AND ADDITIONAL SUPPORTIVE SERVICES THROUGH THE INTERNATIONAL STUDENT CHRISTIAN ASSOCIATION

WHEREAS, Staff determined that this use classifies as Use Unit 4, a cultural and recreation facility, in the *Unified Development Code*, which includes uses such as dormitories, institutional uses, care facilities; and

WHEREAS, on May 13, 2024, the Planning Commission voted 6-1-0 and approved the applicant's requested Conditional Use permit for a group home with numerous conditions limiting the number of full time residents to six, vehicles parked to four, and all other conditions recommended by staff; and

WHEREAS, Council Members Sarah Bunch, Sarah Moore, and Mike Wiederkehr have properly appealed the decision of the Planning Commission pursuant to §155.05(A)(3) of the *Unified Development Code*.

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 grants the appeal of Council Members Sarah Bunch, Sarah Moore, and Mike Wiederkehr and denies Conditional Use Permit CUP 2024-017 which would have allowed a group home facility for graduate students and additional supportive services through the International Student Christian Association.

TO: City of Fayetteville Arkansas – City Clerk and City Council Members

FR: University Heights residents

RE: Appeal of CUP 2024-0017 – 10 S Palmer

DT: 05/27/24

CC: University Heights signators

We the undersigned residents of University Heights neighborhood and tax-paying citizens of Fayetteville, AR are requesting an appeal of the Planning Commission's decision to grant a Conditional Use Permit (CUP 2024-0017) located at 10 S. Palmer. We are appealing this decision based on the City of Fayetteville's Unified Development Code (UDC) and prior rulings by the Planning Commission and the City Council as to compatibility and safety.

Our ask is that the council deny this Conditional Use Permit (CUP 2024-0017) based on:

1. Precedence – previously denied by the Planning Commission and the City Council as STR2. This request produces use in excess of the STR2 request and is significantly incompatible to RSF4 use.
2. Conditions the Planning Commission used to grant this CUP cannot be met. Safety is the primary concern. Both Center and S. Palmer streets are 19 feet curb to curb with a 20 ft min requirement based on ordinance. One car will create safety issues that the city cannot enforce. (Video of emergency)
3. Future use of the property – if granted, would require:
 - a. Fire and ADA compliance.
 - b. On property hard surface parking with handicap spaces
 - c. Any transfer would terminate the CUP.
4. ISCA does not exist – U of A does not recognize; no 501c3 at the time of the Planning Commission's decision; no active LLC with the State of Arkansas. The CUP was granted as a dorm which requires association to the UofA and a 501c3 status and recognized by the State of Arkansas.

DETAILS OF OUR ASK/OUR APPEAL:

The Planning staff and the Planning Commission granted the CUP based on:

- neighborhood compatibility,
- and with 2 conditions

1. Compatibility – the proposed use is non-compatible based on:
 - a. Odious analysis of comparable properties:
 - i. The CUP 2024-0017 – 5/13/24 Document – Background
 1. Based on the planning map (attachment -1), this is an RSF-4 neighborhood,
 2. 10 S. Palmer backyard's property line is the boundary for this RSF-4 district according to the District Map.
 3. Table-1 of CUP 2024-0017 should be corrected to allow for compatibility analysis based on code/ordinance – meaning the compatibility should be done within the district.
 4. Table-1 analysis comparison would be disagreeable since we would be comparing different uses...different districts.
 - b. Precedent – 10 S Palmer was denied as non-compatible by the Planning Commission (7/24/23) and the City Council (9/5/23) for a Short-Term Rental – Type 2/STR2 – based on impact on the neighborhood – impact of parties.
 - i. For purposes of discussion – hypothetical use of STR2:
 1. Events – 20 events per year:
 - a. Football – 6 events.
 - b. Basketball – 13 events
 - c. Graduation – 1 event
 2. 5 rooms with 2 people per room – 10 people
 3. Uses – 20 events with 10 people = 200 uses per year
 - ii. The Planning commission denied a STR2 on 7/24/23 for non-compatibility, parties.
<https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7496?seekto=9548&site=1>
 - iii. The City Council denied a STR2 on 9/4/23 for non-compatibility, parties.
<https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7955?seekto=7126&site=1><https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7955?seekto=7126&site=1>
 - iv. CUP 2024-0017 approval seems to sanction parties:
 1. 2024 CUP produces higher use than STR2.
 2. CUP 2024 0017 – page 2 – Conditions of Approval – Item 2 – Frequent Events
 - a. 10 people weekly X 40 weeks of school year = 400 uses
 - b. 30 people qtrly X 4 qtrs = 120 uses
 - c. Total uses per year 520 uses/yr.
 3. 2023 STR request – denied by planning and council.
 - a. 10 people for tailgate party X 20 events/yr. = 200 uses/yr.
 4. 2024 CUP USE VS STR2 USE = 320 more uses.

- v. CUP 2024-0017 has over 300 more uses than the planning commission and this body denied this twice last year.
 - vi. IF this was found non-compatible for 200 uses – then this should be found non-compatible for 520 uses.
- 2. Conditions of Approval as presented to the Planning Commission by staff (CUP 2024-0017 – page 2 – Conditions of Approval):
 - a. Compatibility – based on section 1 of this appeal this use is non-compatible with RSF4.
 - b. Limited to the use – the property has been approved as a Group Home - tenants and a venue (for gatherings and assemblies)
 - i. Group home - Same square footage – more people than what was denied as a STR2:
 - 1. 6 people granted under CUP 2024
 - 2. 3 unrelated denied as STR2.
 - ii. 4 parking spaces granted under CUP 2024 – will block the sidewalk.
 - iii. A venue based on the application and staff confirmation – assemblies and gatherings:
 - 1. In addition to 6 residents (Note: STR application had 5 rooms in application)
 - 2. Nothing mentioned about ADU-Auxiliary Dwelling Unit.
 - 3. 10 people weekly.
 - 4. 30 people quarterly.
 - c. CHANGE OF USE to Multi-family from RSF4 – group home with a venue
 - i. If ISCA is granted this CUP 2024-0017, the group must adhere to venue standards:
 - ii. Fire Code – sprinklers and fire exit (2 egresses per room)
 - iii. ADA
 - 1. Door width
 - 2. Bathrooms and showers
 - 3. Lifts and ramps
 - 4. Solid surface parking with handicap spaces
 - 5. Counter tops and appliances.
 - 6. Washer/dryer height
 - d. Maximum of 6 – one per bedroom
 - e. Parking on property – as a venue requires hard surface parking and curb cuts to avoid street parking issues and fire access violations.
 - f. On street parking is not permitted on S Palmer and W Center – see APPENDIX C
CURRENT SITUATION DOES NOT ALLOW FOR THIS CONDITION TO BE MET
THE PLANNING COMMISSION DIDN'T WANT TO BURDEN THE HOMEOWNER NOR
THE CITY WITH MAKING THE ROADWAY COMPLY WITH ORDINANCE.
THEIR OPTION AT THIS POINT WAS TO DENY – NOT LEAVE THE NEIGHBORHOOD
AT RISK FOR FIRE AND AMBULANCE ACCESS.
 - i. Both Palmer and Center are 19 feet curb to curb (APPENDIX – B – FIRE/SAFETY) -

- a. 503.2.1 Fire access not less than 20 feet
 - b. 503.4 Fire apparatus must have an unobstructed path including parking cars.
 - c. One car puts the whole neighborhood in danger – 163.02.c.3.c.b in case of fire or other catastrophes.
 - ii. Relies on enforcement:
 - a. The city does not have the resources to enforce.
 - b. Leaving enforcement to tenants has not materialized.
 - g. Signage – clarify?
 - h. Associated permits – are there permits required for non-university dormitories or apartments? And would those permits have to be prior to occupancy?
 - i. Refuse – dumpster or regular trash?
 - j. Loading area – venue use; not to use street for loading and unloading.
 - k. Lighting – outdoor
 - l. Property manager – Landlord representative; monitoring of students – chaperone/house manager? Responsible party – usually 2 – will that take up 2 rooms?
- 3. Other considerations:
 - a. How do we prevent what happened on Duncan St. from occurring on Palmer?
DEVELOPMENT ON DUNCAN is why ISCA is moving.
 - i. Duncan was an acceptable place for ISCA.
 - ii. Property Developers wanted to buy the ISCA property for development on Duncan St.
 - iii. Had to find a replacement location for them.
 - iv. Property developers approached several property owners on Duncan and were asked to sell in order to provide a place for ISCA – before the sale, the buyer was changed to another buyer.
 - v. The goal of the developer seems to be to develop Duncan Street.
 - vi. 10 S. Palmer was purchased as a location for ISCA.
 - vii. The real question is this property being acquired under the same goal – to redevelop an area – now or in the future – a way to re-zone for development?
 - viii. Would ask that if granted to ISCA – that any transfer of the proper terminates the CUP.
 - b. DOES ISCA exist?
 - i. Unit 4 conditional use would require ISCA to be an organization sanctioned by the University of Arkansas to be granted Dormitory use. The staff recommendation which the planning commission approved, used RSF4 with conditional use Unit 4 as the basis for compatibility.
 - 1. At the time of Planning Commission application and approval
 - 2. There is no active 501c3.
 - 3. There is no active LLC with the State of Arkansas
 - 4. U of A student affairs doesn't recognize ISCA as a student organization

5. Special Note: This organization seems to have had 5 name changes since 2009.
- c. Staff used RSF4 Unit – Dorm (APPENDIX -A)
 - i. Ordinance 162.01.D.1 – Unit 4 – Description and examples
 - ii. Unit 4 – Cultural and Recreational Facilities
 - iii. Unit 4 consists of cultural and recreational uses.
 - iv. To Serve the Residents of the community
 - v. Included:
 1. Dorms – which is what was recommended to the applicant to file under
 2. The rest of the list – public uses
 - vi. A broad definition with a list of examples – the majority of which are public uses for the residents of the community to use.
 - vii. Unit 4 conditional use in a RSF4 would seem to presume the need for a school and an attachment to the school to be granted a dorm.
 - viii. Since ISCA does not have its own school, nor is it connected to the University of Arkansas – ISCA does not qualify for Unit 4 conditional use.
- d. University Heights is being evaluated for nomination as a Historic District. This speaks to the character of this formerly rural area. Some of the descendants of people who lived here before modern development still make University Heights their family home.
4. [https://library.municode.com/ar/fayetteville/codes/code_of_ordinances?nodeId=CD_ORD_TITXVUNDECO_CH162USUN#:~:text=\(D\),Theater%20\(legitimate\)](https://library.municode.com/ar/fayetteville/codes/code_of_ordinances?nodeId=CD_ORD_TITXVUNDECO_CH162USUN#:~:text=(D),Theater%20(legitimate))

Based on the many factors listed above, please do not approve the Conditional Use Permit for 10 S. Palmer. Please deny CUP 2024-0017.

Sincerely,

Allen Baker, Jennifer Law,

Bill Bradley, Stephanie Bradley

Carol Lester,

Beth Lewis, David Lewis,

Karen Pears, Tom Pears (1634 W Hotz)

Matt Wolfe,

Travis Smith, Rebecca Smith

Cheryl and Brian Keller

Glenna and Tom Bohannon

APPENDIX – A:

UDC – Ordinance 162.01.D

(D)

Unit 4. Cultural and Recreational Facilities.

(1)

Description. Unit 4 consists of cultural and recreational uses to serve the residents of the community.

(2)

Included Uses.

EXPAND

Auditorium, stadium	
Art gallery, museum	
Cemetery	
Childcare center, nursery school *	
Church	
College or university	
Community center	
Crematorium	
Dormitory	
Eldercare	
Hospital	
Mausoleum	

Playfield, playground	
Private club or lodge	
School:	• Elementary
	• Junior High
	• Senior High
Swimming pool	
Tennis court	
Theater (legitimate)	

APPENDIX – B:

FIRE ACCESS/SAFETY

503.2.1 Dimensions

Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for *approved* security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.1 Dimensions

Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), exclusive of shoulders, except for *approved* security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.4 Obstruction of Fire Apparatus Access Roads

Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 shall be maintained at all times.

APPENDIX – C: SAMPLE OF EMERGENCY ON PALMER



9542_1.mp4

Appeal Request Letter with Council Member Sponsors

From: [Bunch, Sarah](#)
To: [Tom Pears](#)
Cc: [CityClerk](#); [Stafford, Bob](#); [Jones, D"Andre](#); [Moore, Sarah](#); [Wiederkehr, Mike](#); [Berna, Scott](#); [Turk, Teresa](#); [Hertzberg, Holly](#); [Pennington, Blake](#); [Williams, Kit](#); [Hungate, Hannah](#); [Curth, Jonathan](#); [Masters, Jessica](#); [Paxton, Kara](#); [Shelton, Jackson](#)
Subject: Re: Appeal - CUP 2024-0017 - 10 S Palmer
Date: Tuesday, May 28, 2024 9:02:17 AM

I agree to back this appeal. Let me know if you need anything else from me to get this on our agenda.

Sarah Bunch

Sent from my iPhone

On May 28, 2024, at 8:46 AM, Tom Pears <pearsconsulting@gmail.com> wrote:

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you so much.... It took our neighborhood a few days to gather our thoughts and put down in writing...and to gather signers to the document - all with holiday and end of school...

We hope to get at least another 2 supporters of our appeal by COB today....

Thank you for your great service on our behalf!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On May 28, 2024, at 8:33 AM, CityClerk <cityclerk@fayetteville-ar.gov> wrote:

Good morning Mr. Pears,
Thank you for submitting your appeal for CUP-2024-0017, our office has saved your attached document in our files.

Please keep in mind, a Conditional Use Permit (CUP) Appeal is

required to be submitted to our office and gain the support of three Council Members within 10 business days following the decision made from the Planning Commission. Our office must receive a written notification of support from the three sponsoring Council Members.

It is my understanding CUP-2024-0017 was approved at the Planning Commission Meeting on Monday, May 13, 2024. Therefore, for this appeal to meet the requirements to be brought forward to Council, our office must receive all three messages of support by the end of the business day today Tuesday, May 28, 2024.

As of this morning, our office has received Council Member Mike Wiederkehr's e-mail of support (attached). We will keep a look out for any incoming messages throughout the day.

I've copied our City Attorneys, Development Services Director, and Development Services Manager to review this information and make any corrections necessary, as well as to keep them informed on this appeal.

Should you have any questions or concerns please feel free to reach out to our office.

Thank you,

Jonathan Ramirez
Communication Specialist
Office of the City Clerk-Treasurer
City of Fayetteville, Arkansas
479-575-8323
fayetteville-ar.gov
jramirez@fayetteville-ar.gov
<image001.png>

<image002.png>

<image003.png>

<image004.png>

<image005.png>

<image006.png>

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Monday, May 27, 2024 4:22 PM
To: CityClerk <cityclerk@fayetteville-ar.gov>
Cc: Stafford, Bob <bob.stafford@fayetteville-ar.gov>; Jones, D'Andre <dandre.jones@fayetteville-ar.gov>; Moore, Sarah <sarah.moore@fayetteville-ar.gov>; Wiederkehr, Mike <mike.wiederkehr@fayetteville-ar.gov>; Berna, Scott <scott.berna@fayetteville-ar.gov>; Bunch, Sarah <sarah.bunch@fayetteville-ar.gov>; Turk, Teresa <teresa.turk@fayetteville-ar.gov>; Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>
Subject: Appeal - CUP 2024-0017 - 10 S Palmer

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good City Clerk;

Pls find our request for appeal of the Planning Commissions grant of the conditional use of 10 S Palmer as a dormitory in a RSF-4 district. We would ask for this appeal to be placed on the agenda of the city council for consideration to over-turn and deny this CUP.

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Thank you so much for your great service!

T. pears

and residents of University Heights

--

Tom Pears
Pears Consulting
1634 W Hotz
Fayetteville, Arkansas 72701
pearsconsulting@gmail.com

<Appeal CUP 2024-0017 - 10 S Palmer - 052724 318pm.pdf>
<Council Member Wiederkehr Support E-mail.pdf>

Appeal Request Letter with Council Member Sponsors

From: [Moore, Sarah](#)
To: [CityClerk](#); [Tom Pears](#); [Stafford, Bob](#); [Jones, D'Andre](#); [Wiederkehr, Mike](#); [Berna, Scott](#); [Bunch, Sarah](#); [Turk, Teresa](#); [Hertzberg, Holly](#)
Cc: [Pennington, Blake](#); [Williams, Kit](#); [Hungate, Hannah](#); [Curth, Jonathan](#); [Masters, Jessica](#); [Paxton, Kara](#); [Shelton, Jackson](#)
Subject: Re: Appeal - CUP 2024-0017 - 10 S Palmer
Date: Tuesday, May 28, 2024 8:50:47 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

I will also support this appeal.

Thank you.

--

[Sarah Moore](#)
Fayetteville City Council, Ward 2
sarah.moore@fayetteville-ar.gov
479.263.6629



Report a concern with SeeClickFix:

<https://www.fayetteville-ar.gov/4233/Report-a-Concern-with-SeeClickFix>

Speak up on City projects:

<https://speakup.fayetteville-ar.gov/>

Voice your feedback to the entire Council and Mayor by emailing:

agendaitemcomment@fayetteville-ar.gov

From: CityClerk <cityclerk@fayetteville-ar.gov>

Date: Tuesday, May 28, 2024 at 8:33 AM

To: Tom Pears <pearsconsulting@gmail.com>, Stafford, Bob <bob.stafford@fayetteville-ar.gov>, Jones, D'Andre <dandre.jones@fayetteville-ar.gov>, Moore, Sarah <sarah.moore@fayetteville-ar.gov>, Wiederkehr, Mike <mike.wiederkehr@fayetteville-ar.gov>, Berna, Scott <scott.berna@fayetteville-ar.gov>, Bunch, Sarah <sarah.bunch@fayetteville-ar.gov>, Turk, Teresa <teresa.turk@fayetteville-ar.gov>, Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>

Cc: Pennington, Blake <bpennington@fayetteville-ar.gov>, Williams, Kit <kwilliams@fayetteville-ar.gov>, Hungate, Hannah <hhungate@fayetteville-ar.gov>, Curth, Jonathan <jcurth@fayetteville-ar.gov>, Masters, Jessica <jmasters@fayetteville-

ar.gov>, Paxton, Kara <kapaxton@fayetteville-ar.gov>, Shelton, Jackson
<jshelton@fayetteville-ar.gov>

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Jonathan Ramirez

Communication Specialist

Office of the City Clerk-Treasurer

City of Fayetteville, Arkansas

479-575-8323

fayetteville-ar.gov

jramirez@fayetteville-ar.gov



From: Tom Pears <pearsconsulting@gmail.com>

Sent: Monday, May 27, 2024 4:22 PM

To: CityClerk <cityclerk@fayetteville-ar.gov>

Cc: Stafford, Bob <bob.stafford@fayetteville-ar.gov>; Jones, D'Andre <dandre.jones@fayetteville-ar.gov>; Moore, Sarah <sarah.moore@fayetteville-ar.gov>; Wiederkehr, Mike <mike.wiederkehr@fayetteville-ar.gov>; Berna, Scott <scott.berna@fayetteville-ar.gov>; Bunch, Sarah <sarah.bunch@fayetteville-ar.gov>; Turk, Teresa <teresa.turk@fayetteville-ar.gov>; Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>

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T. pears

and residents of University Heights

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Tom Pears

Pears Consulting

1634 W Hotz

Fayetteville, Arkansas 72701

pearsconsulting@gmail.com

From: [Wiederkehr, Mike](#)
To: [Tom Pears](#); [CityClerk](#); [Shelton, Jackson](#); [Paxton, Kara](#); [Williams, Kit](#); [Pennington, Blake](#)
Subject: Re: Appeal - CUP 2024-0017 - 10 S Palmer
Date: Monday, May 27, 2024 4:49:08 PM
Attachments: [Appeal CUP 2024-0017 - 10 S Palmer - 052724 318pm.docx](#)

Dear City Clerk and City Attorney,

I am willing to sign on as one of the three Council members needed for this appeal.

Sincerely,
Mike Wiederkehr

Sent from my iPhone

On May 27, 2024, at 4:24 PM, Tom Pears <pearsconsulting@gmail.com> wrote:

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

fyi - we finally got our neighbors to read and agree to support as signators to the appeal... Pls find the email to the clerk with copies to all the council...

Would love to have you reply to the clerk with a yes vote of support...

Thank you so much!
T. pears

----- Forwarded message -----

From: **Tom Pears** <pearsconsulting@gmail.com>
Date: Mon, May 27, 2024 at 4:21 PM
Subject: Appeal - CUP 2024-0017 - 10 S Palmer
To: <cityclerk@fayetteville-ar.gov>
Cc: <bob.stafford@fayetteville-ar.gov>, <dandre.jones@fayetteville-ar.gov>, <sarah.moore@fayetteville-ar.gov>, Wiederkehr, Mike <mike.wiederkehr@fayetteville-ar.gov>, <scott.berna@fayetteville-ar.gov>, Bunch, Sarah <sarah.bunch@fayetteville-ar.gov>, Turk, Teresa <teresa.turk@fayetteville-ar.gov>, Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>

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--

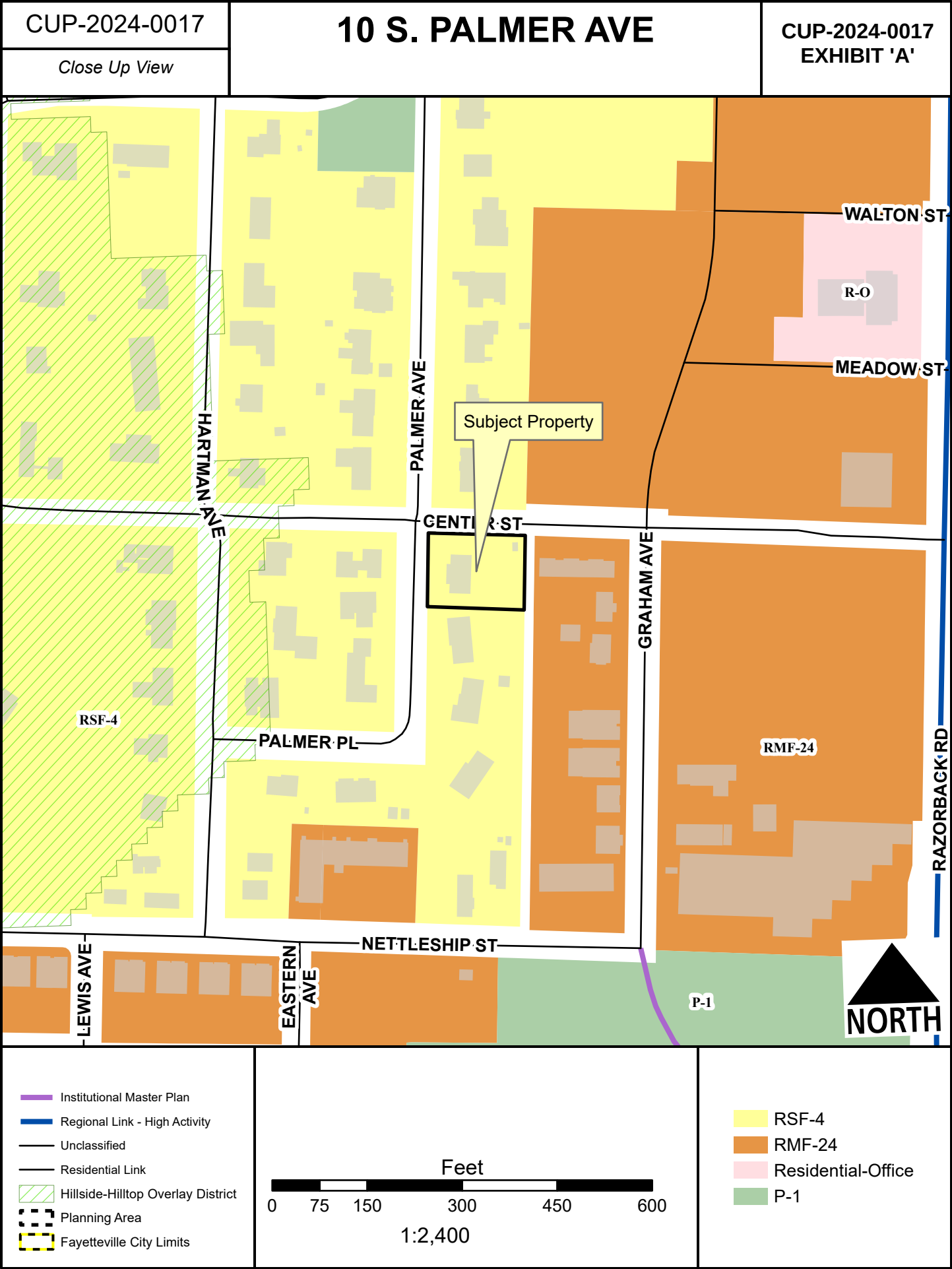
Tom Pears

Pears Consulting

1634 W Hotz

Fayetteville, Arkansas 72701

pearsconsulting@gmail.com





TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager

MEETING DATE: May 13, 2024 **Updated with results from May 13, 2024 PC Meeting**

SUBJECT: **CUP-2024-0017: Conditional Use Permit (10 S. PALMER AVE/BEYKIRCH, 521):** Submitted by KEY ARCHITECTURE INC for property located at 10 S. PALMER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.40 acres. The request is to use the residence for a cultural and recreational facility for international student housing.

RECOMMENDATION:

Staff recommends approval of **CUP-2024-0017** with conditions, based on the findings contained in this report.

RECOMMENDED MOTION:

*"I move to approve **CUP-2024-0017** with conditions, determining:*

- In favor of compatibility with adjacent properties; and*
- In favor of all other conditions as recommended by staff.*

BACKGROUND:

The subject property is in the University Heights neighborhood at 10 S. Palmer Avenue, which is approximately 800 feet west of the University of Arkansas' John McDonnell Field and situated at the southeast corner of W. Center Street and S. Palmer Avenue. The property is developed with an approximately 3000 sq. ft. single-family home that was built in 1966. The current property owner previously requested a conditional use permit for the home to be used as a Type 2 short-term rental, but that request was denied by Planning Commission and ultimately City Council following an appeal (CUP-2023-0073). Surrounding land uses and zoning is depicted in *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre
South	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre
East	Multi-family Residential	RMF-24, Residential Multi-family, 24 Units per Acre
West	Single-family Residential	RSF-4, Residential Single-family, 4 Units per Acre

FUTURE LAND USE DESIGNATION: Residential Neighborhood Area

Request: The applicant requests approval of a conditional use permit to allow for a 3,750 sq. ft. group home facility for graduate students with additional supportive services through the International Student Christian Association (ISCA). Staff has determined that this use classifies as Use Unit 4, a cultural and recreational facility, in the Unified Development Code, which includes uses such as dormitories, institutional uses, care facilities.

Public Comment: Staff has received comments in opposition to the request, as well as inquiries from the public with no direct opposition or support of the proposal. All written comments are included in the attachments.

RECOMMENDATION: Staff recommends approval of **CUP-2024-0017**, subject to the following conditions:

Conditions of Approval:

1. **Planning Commission determination of compatibility.** *Staff finds the proposed cultural and recreational facility is compatible for the reasons outlined in this report;*
2. **This conditional use permit is limited to the use as described in the applicant's request letter. The following specifications apply:**
 - Size of the facility: Approximately 3,750 square feet
 - Parking: Limited to 4 outdoor vehicles on the property
 - Frequency of events: **Weekly:** Small groups (Maximum of 10)
Quarterly: Large groups (Maximum of 30, or dependent on fire code allowance, whichever is greater)
3. **Due to the change of use from a single-family home to an assembly/multi-family occupancy, this project will need to conform to the International Building Code to meet the needs of fire protection/separation.**
4. **Maximum number of full-time residents shall be limited to one per bedroom, or a maximum of 6.**
5. **Parking on the property shall be subject to the requirements outlined in §172.11-Driveway and Parking Standards for Four (4) or Less Spaces to ensure compatibility to the single-family nature of the neighborhood.**
6. **On-street parking is not permitted along S. Palmer Avenue or W. Center Street.**
7. **Trash carts are kept out of view from the public and screened when not at the curb for typical pick-up days.**
8. **Any proposed signage will be subject to the City's sign ordinance and all the regulations therein.**
9. **Approval of this conditional use permit does not constitute approval of associated permits or development entitlements not fully reviewed at this time. A building permit will be required for the applicant's proposed addition.**

PLANNING COMMISSION ACTION:		Required	<u>YES</u>
Date: <u>May 13, 2024</u>	☐ Tabled	☒ Approved	☐ Denied
Motion: <u>Cabe</u>		with all conditions as recommended by staff	
Second: <u>McGetrick</u>			
Vote: <u>6-1-0 (Commissioner Madden opposed)</u>			

FINDINGS OF THE STAFF

Section 163.02. AUTHORITY; CONDITIONS; PROCEDURES.

B. Authority; Conditions. The Planning Commission shall:

1. Hear and decide only such special exemptions as it is specifically authorized to pass on by the terms of this chapter.
2. Decide such questions as are involved in determining whether a conditional use should be granted; and,
3. Grant a conditional use with such conditions and safeguards as are appropriate under this chapter; or
4. Deny a conditional use when not in harmony with the purpose and intent of this chapter.

C. A conditional use shall not be granted by the Planning Commission unless and until:

1. A written application for a conditional use is submitted indicating the section of this chapter under which the conditional use is sought and stating the grounds on which it is requested.

Finding: The applicant has submitted a written application requesting a conditional use permit for a cultural and recreational facility as a group home for international students.

2. The applicant shall pay a filing fee as required under Chapter 159 to cover the cost of expenses incurred in connection with processing such application.

Finding: The applicant has paid the required filing fee.

3. The Planning Commission shall make the following written findings before a conditional use shall be issued:

(a.) That it is empowered under the section of this chapter described in the application to grant the conditional use; and

Finding: The Planning Commission is empowered under §161.07 to grant the requested conditional use permit.

(b.) That the granting of the conditional use will not adversely affect the public interest.

Finding: Staff finds that granting the requested conditional use permit will not likely negatively affect the public interest. Cultural and recreational facilities are included as a conditional use in the RSF-4 zoning district because they have the potential of generating traffic, noise, or other disturbance beyond what is typically expected in a single-family district. One thing that staff takes into consideration on a balance of recommendations for conditional uses is the aspect of scale, visual, and traffic impacts on the surroundings. Given the applicant's proposal, staff finds that the property, though with the possibility to house up to 6 students at a time, is likely to function primarily as a residence under one household, and secondly as a traffic-generating facility for the use of assembly and gathering. The residence, even with a proposed addition, is of a similar size and scale to the surrounding neighborhood.

(c.) The Planning Commission shall certify:

(1.) Compliance with the specific rules governing individual conditional uses; and

Finding: There are no specific rules governing this type of use.

(2.) That satisfactory provisions and arrangements have been made concerning the following, where applicable:

(a.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;

Finding: The applicant supplied a site plan that indicates that there are three separate driveways to this property. Code requires a minimum separation distance of 30 feet for single-family dwellings with multiple driveways, and the existing driveways appear to meet that minimum requirement. However, with the proposed change in use, staff finds that curb cuts would typically need to meet a minimum separation distance of 50 feet, since the property would no longer be classified as a single-family residence. An evaluation of whether those driveways would be required to be brought into compliance with that standard would be evaluated at the time of a building permit under 166.08(G). The applicant's request letter indicates that the students are not likely to have access to vehicles due to their inability to hold outside work given their existing visa statuses. Though the use of the property is changing from a strictly single-family residence to a group home, staff recommends a condition that the location be subject to single-family parking requirements to ensure physical compatibility with the single-family surroundings. These requirements limit outdoor parking to a maximum of 4 vehicles at any given time. Further, given the narrowness of both W. Center Street and S. Palmer Avenue, staff recommends an additional condition indicating that on-street parking will not be permitted in association with this facility. There is

currently a sidewalk along W. Center Street, but S. Palmer Avenue does not have sidewalk.

- (b.) Off-street parking and loading areas where required, with particular attention to ingress and egress, economic, noise, glare, or odor effects of the special exception on adjoining properties and properties generally in the district;

Finding: Three separate driveways that could potentially accommodate up to 6 vehicles currently exist on the property. As stated above, staff recommends a condition of approval limiting the number of vehicles to a maximum of 4 to be parked outside at any given time to maintain compatibility with the existing surrounding single-family dwellings.

- (c.) Refuse and service areas, with particular reference to ingress and egress, and off-street parking and loading;

Finding: The applicant has not provided any specific additional information regarding refuse and service, but it is likely that only residential carts will be necessary to serve the facility. Staff recommends a condition that trash carts are kept out of view from the public and screened when not at the curb for typical pick-up days.

- (d.) Utilities, with reference to locations, availability, and compatibility;

Finding: An existing 16-inch water main and a 2.25-inch water main are present in W. Center Street. An existing 8-inch sewer main is in S. Palmer Avenue and a 6-inch sewer main is in W. Center Street. Capacity or any necessary utility upsizing will be evaluated with any subsequent permits.

- (e.) Screening and buffering with reference to type, dimensions, and character;

Finding: Staff recommends screening of any trash receptacles from view of the public right-of-way when not at the curb for scheduled retrieval days.

- (f.) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

Finding: Any proposed signage will be subject to the City's sign ordinance and all the regulations therein. Where a conditional use permit has been approved for a nonresidential use within the RSF-4 zoning district, a wall sign is typically limited to a display surface area of 8 square feet.

- (g.) Required yards and other open space; and

Finding: The applicant has provided a preliminary site plan that appears to be compliant with typical setbacks as required by the RSF-4 zoning district.

- (h.) General compatibility with adjacent properties and other property in the district.

Finding: Staff finds that the proposal is compatible with adjacent properties given the overall scale of the request, and the limited amount of outside events the

organization intends to host at the property. The majority of the time, this property will be operating like a typical residential use, and staff finds that limiting the number of residents to one per bedroom is consistent with the size and scale of the facility. Staff does recommend conditions of approval that should help maintain that compatibility to limit disruptions to the neighborhood. Given this property's vicinity to the University and other University-oriented facilities and services, staff finds that the use of this property as a group home for graduate students and occasional assemblies serves as a reasonable transition between the higher intensity University uses and the residential nature of the surrounding property.

- (i.) General compatibility with the goals and intent of the city's adopted land-use, transportation, and other strategic plans.

Finding: Staff finds that the proposal is compatible with the City's adopted land use plans. City 2040 plan encourages a range of housing types to encourage housing affordability and diversity of choice. Staff finds that the provision of an alternative housing type is in line with this goal, and is in line with the goal of creating opportunities for attainable housing.

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code
 - §161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre
- Applicant Request Letter and supplemental information
- Site Plan, Floor Plan, and Elevations
- One Mile Map
- Close-Up Map
- Current Land Use Map

Public Comment (finalized 5.14.2024)

161.07 District RSF-4, Residential Single-Family - Four (4) 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
Unit 46	Short-term rentals

(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 12a	Limited business
Unit 24	Home occupations
Unit 36	Wireless communications facilities
Unit 44	Cluster Housing Development

(C) *Density.*

	Single-family dwellings	Two (2) family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and Area Regulations.*

	Single-family dwellings	Two (2) family dwellings
Lot minimum width	70 feet	80 feet
Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet
Hillside Overlay District Lot minimum width	60 feet	70 feet
Hillside Overlay District Lot area minimum	8,000 square feet	12,000 square feet
Land area per dwelling unit	8,000 square feet	6,000 square feet

(E) *Setback Requirements.*

Front	Side	Rear
15 feet	5 feet	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
-------------------------	-----------

(G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot. Accessory ground mounted solar energy systems shall not be considered buildings.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4858, 4-18-06; Ord. No. 5028, 6-19-07; Ord. No. 5128, 4-15-08; Ord. No. 5224, 3-3-09; Ord. No. 5312, 4-20-10; Ord. No. 5462, 12-6-11; Ord. No. 5921, §1, 11-1-16; Ord. No. 5945, §8, 1-17-17; Ord. No. 6015, §1(Exh. A), 11-21-17; Ord. No. 6245, §2, 10-15-19; Ord. No. 6427, §§1(Exh. C), 2, 4-20-21)

Editor's note(s)—Ord. No. 6625, §1 adopted December 6, 2022, "determines that Section 2 of Ordinance 6427 (Sunset Clause) be amended so that Ordinance 6427 and all amendments to Code Sections ordained or enacted by Ordinance 6427 shall automatically sunset, be repealed and become void on December 31, 2023, unless prior to that date the City Council amends this ordinance to repeal or further amend this sunset, repeal and termination section."



KEY ARCHITECTURE, INC. P.O. BOX 748 FAYETTEVILLE, ARKANSAS 72702 PH: 479.444.6066 FAX: 479.444.1445

Request for Conditional Use

April 3, 2024

The City of Fayetteville
125 W. Mountain
Fayetteville, Arkansas 72701

Dear Planners;

Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program that provides fundamental resources to international graduate students pursuing advanced degrees. ISCA aids its members, many of which are coming from politically sensitive nations, through the provision of housing, meals, and transportation as well as spiritual, social, and educational guidance and support services.

Legal Description:

Lot 6, Block 2, in Leflar's Addition to the City of Fayetteville, Washington County, Arkansas.

Description of Request:

- (a) Existing square footage – 3,000
Addition square footage – 750
Total square footage – 3,750
- (b) See attached plans and elevations
- (c) 6 off-street parking spaces, 2 gravel parking spaces off of S. Palmer and 4 concrete parking spaces off of W. Center St.
- (d) N/A
- (e) Outdoor lighting – existing outdoor lighting consists of a wall sconce at the rear deck. No additional lighting is being proposed.
- (f) Noise- No significant source of noise. Gatherings consist of a family atmosphere of cooking, socializing, and studying scripture.
- (g) Screening – There is no buffering from adjacent properties
- (h) Residential trash service is provided by the City of Fayetteville.
- (i) This site will be utilizing the existing off-street parking spaces. It is not anticipated that this will impact the existing traffic of this neighborhood.
- (j) See attached letter from owner.

April 12, 2024

RE: #10 S. Palmer Ave. – Conditional Use Permit Request

City of Fayetteville Development Services
125 W. Mountain St.
Fayetteville, AR 72701

We are pleased to submit our request for a conditional use permit (Use Unit 4 - cultural and recreational facilities) on behalf of the International Student Christian Association (ISCA.) The subject property is located on the southeast corner of S. Palmer Ave. and W. Center St. and is zoned RSF-4.

Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program that provides fundamental resources to international graduate students pursuing advanced degrees. ISCA aids its members, many of which are coming from politically sensitive nations, through the provision of housing, meals, and transportation as well as spiritual, social, and educational guidance and support services.

Recently renovated to function as a high-volume short-term rental, #10 S. Palmer is ideally suited to serve as a communal living space for up to historically 6 graduate students and would also serve as a bridge helping them gain independence as they earn their advanced degrees. We believe this potential utilization of the premise is in alignment with the "policies, standards and regulations designed to ensure that infill development is appropriate and desirable for the neighborhood and larger community." (City Plan 2040 pg. 8)

This request would invite a small group of education-driven and community-oriented individuals to the neighborhood while also providing a preferred solution for the future of #10 S. Palmer that is far superior to a short-term rental or a revolving residence for underclassmen attending the university.

Compatibility with City Plan 2040

Goal 1 - We will make appropriate infill and revitalization our highest priorities: encouraging the development or redevelopment of vacant, mostly vacant, and underdeveloped property.

This proposal answers the call for appropriate use of a currently vacant property and encourages infill by repurposing a requested and denied short-term rental into the nest of a benevolent nonprofit organization with a 30+ year respected track record of being good neighbors and in meeting the neighborhood expectations. It also functions as a housing unit. It will invite small groups of education-seekers that cohere with each other and those that offer the essential supportive services for their highly specialized needs as international graduate students.

Goal 3 - Require new growth that results in neighborhoods, districts and corridors that are:

- *Compact – via denser housing; meaningful open spaces and preserves; small blocks*
- *Complete – via housing; mixed uses; civic uses; jobs-housing mix in the neighborhoods*
- *Connected – via street-oriented buildings; interconnected streets; interconnected greenways and trails*

A longer-term graduate student accommodation promotes both housing variety and density. Residents of the property will make use of and encourage the growth of existing amenities such as Razorback Transit bus routes 11 and 48 and has direct connectivity to the Razorback side path which gives them coveted options for active transportation. They could choose to head north to the 9' foot wide cycle track or the 8' wide sidewalk where both will travel along west Maple St. connecting them with the Razorback Greenway and Downtown Fayetteville.

They could also travel south along the Razorback side path to the Tsi La Gi Trail which provides another connection to downtown and the Razorback Greenway. In short, #10 S. Palmer is well suited as the location for this conditional use as Use Unit 4 (cultural and recreational facilities.)

#10 S. Palmer is also situated within close proximity to open spaces and preserves like Hotz Park and the conservation areas on and around Markham Hill.

Goal 4 - We will grow a livable transportation network

The Growth Concept Map “reflects city-wide policies to create diverse, efficient, and well-connected communities that are affordable and rich in local employment, access to transportation, services, and culture.” (City Plan 2040 pg. 13.) Encouraging establishment in a neighborhood located near a Tier 2 Center, a Special District and a High Activity Corridor in turn stimulates public trail and transit use and promotes the further development of existing infrastructure and amenities such as the nearby Razorback bus routes and pedestrian trail accesses.

The potential influence of the requested use of this property is in keeping with goals specific to Special Districts and High Activity Corridors as their growth should “develop to become more pedestrian and bicycle friendly,” and “improve mobility for pedestrian, bicycle, and transit use.” (City Plan 2040 pg. 16.)

Goal 6 - We will create opportunities for attainable housing.

As students coming from often impoverished countries, many of the prospective tenants face challenges in procuring attainable housing. ISCA helps to alleviate some of these issues by providing affordable accommodations and coordinated services at below market cost to their international graduate students.

The university is at the core of our city and creating solutions for student housing is vital to progress. City Plan 2040 submits that “in economic expansionary periods, the construction of modest housing for low- to moderate- income households is negligible due to market forces that direct developers to meet the housing needs of middle- and upper-income households where profit margins are higher.” Adapting vacant properties to be utilized as graduate student housing relieves some of the strain of low supply and high demand in accommodating more modest earners.

Due to the very low income that graduate students receive from the university they must have below market rental rates and other essential subsidies in order to meet their daily needs. International graduate students are not allowed to work or earn income in any way or their visa will be subjected to relocation for violating their immigration status guidelines, resulting in deportation.

Compatibility with Neighborhood

The neighborhood is comprised of 17 single family residential homes occupied by a mix of individuals, families and college students. One letter of opposition to #10 S. Palmer’s former short-term rental application request stated their concern that the property’s proximity to Donald W. Reynolds Stadium and Bud Walton Arena would promote the property’s use as primarily a tailgating location. Its use as such did not align with the ideals and community standards of the surrounding residents. This newly proposed use as the ISCA home base would alleviate concerns involving a “revolving door of strangers” as the occupants would be highly involved graduate students with longer term tenures, rather than an undergrad party hub.

While some of ISCA’s educational outreach takes place on campus, examples of unobtrusive communal activities that could be hosted at the residence include small group bible studies, collective tutoring, welcome dinners, ice cream socials and barbecues.

Conclusion

We thank you for your consideration of this request on behalf of ISCA as they work toward carrying forward their existing reputation as respectful, community-cognizant neighbors to a property that better aids in the facilitation of the coordinated services that respond to the individual needs of these international graduate students.



CITY OF
FAYETTEVILLE
ARKANSAS

To whom it may concern:

For the address of 89 S. Duncan Ave. Let it be known that the Code Compliance Department for the City of Fayetteville, AR does not have any open code violations against the property. This property has been and continues to be a good neighbor to the City, and its residents.

Sincerely,

Billy Bryant
Senior Code Compliance Officer

Mailing Address:
113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov



April 16, 2024

To whom it may concern,

Please accept this letter as acknowledgement that the Fayetteville Police Department has received no complaints whatsoever with regards to 89 S. Duncan Ave, Fayetteville, AR, including its owner, International Student Christian Association, and Kevin Michael Smith, ISCA's President, who resides at 2299 Gooseberry Lane, Fayetteville, AR 72204, and the International Student Christian Association organization. It has and has no opposition to its request for a Conditional Use Permit at 10 S. Palmer Ave in Fayetteville.

Should you have further question regarding this matter, please do not hesitate to contact the Fayetteville Police Department's Records Division 479-587-3567.

AbiGrace Diaz

Police Support Specialist

1800 N. Stephen Carr Memorial Blvd.

Fayetteville, Arkansas 72704

adiaz@fayetteville-ar.gov

T 479.587.3571 | F 479.587.3570

Please provide answers to the following questions:

1) How many students will live there at any given time? Based on the floor plans, staff would anticipate no more than 1 per bedroom. Does that seem accurate?

- Yes, there will be up to six residents each with their own bedroom.

2) How many people are expected to attend for assembly / gatherings (barbecue, ice cream socials, bible studies?) How often are these intended to occur?

Assemblies will range from small groups (4-10) for activities like bible studies with maximum attendance for larger events such as barbecues being 20-30 occupants. Small groups would be weekly occurrences and ice cream socials and gatherings would be on a quarterly basis.

The fire department has noted that assembly uses will trigger the need to meet additional fire code requirements, and their interpretation is that this proposal will meet those triggering factors.

We are in communication with the fire marshal and are in agreement with their findings.

3) What external/supportive services come to the property, and how often?

- a) ISCA's Shared Support Services

i) Full Time Campus Minister - ISCA is led by its campus minister who provides many services and support for its residents, as outlined below:

(1) Transportation-

ISCA provides transportation to ISCA students for shopping and personal needs. Transportation is also provided for any special or programmed events.

(2) Enhanced Housing and related Services -

(a) Not for Profit - ISCA is a 501(c)3 nonprofit organization.

(b) Convenient - ISCA housing is convenient to the University of Arkansas and other necessary services such as active transportation.

Most international graduate students are forced to live far from campus yet they do not drive (think Leverett and North.) Providing housing within a reasonable and walkable distance to the University of Arkansas is a challenge that the ISCA house answers for these international graduate students.

(c) Affordable - Far below market rents

(d) Community - Community living in a private setting

(e) Inviting - "At ISCA we don't rent rooms, we invite people into our community."

(f) Inclusive - Being a Christian is not a requirement of residents of ISCA and no specific religious beliefs are required.

(g) Home - ISCA serves as a "home away from home" for international graduate students that require assistance with daily needs, local assimilation and cultural awareness and enlightenment.

(h) Open - Bedrooms are not under lock and key. The ISCA house functions as a residential home.

(2) Teaching -

(a) Full time ISCA Campus Minister Providing Chaplain Services:

- (i) Leads weekly Bible studies
- (ii) Facilitates cultural discussions
- (iii) Ministers to students on an as necessary basis

(3) Events -

(a) Dinners

(b) Cookouts

(c) Breakfast at the Park

(d) ISCA Cycling Club

(e) Futbol

(f) Weekly Bible Study

ii) ISCA Cultural Services -

(1) Cultural Learning -

(a) ISCA's Campus Minister teaches resident students about cultural life and customary behavior in the United States

(b) Students learn about each other's cultures and customs and grow in understanding and tolerance for other cultures including that of the United States.

(2) Delivered a Prepared Foods -

Sharing food is essential to creating community. Most ISCA meetings begin with a meal, normally cooked by its students or a staff member in order to help the international graduate students to learn about each other's origins and typical dietary preferences.

(a) Facilitated Conversation - Students engage in lively dialogue about food preferences, typical dining styles and cooking methods of their cultures, and traditions surrounding food preparation and dining.

(b) Programmed Debates- Exciting exchanges result over the merits of each country's cuisine.

(3) Diversity -

(a) ISCA residents are commonly native to a variety of countries and this medley fosters inclusion and acceptance which will serve them well into the future.

(4) Learning -

By living with students from other counties, ISCA residents are able to learn not only about the United States, but also about other cultures.

iii) Recreational activities-

(1) Minister led- ISCA's Full time Campus Minister leads residents in many recreational activities, including:

(a) Breakfast in the Park

(b) Cookouts

(c) Dinners

(d) Bible Studies

(e) ISCA Cycling Club

(f) Hiking

(g) Futbol

(h) Programmed activities that encourage cultural awareness such as learning popular games, recreational activities, typical greetings as well as the customary birthday songs and traditions of each resident's native country.

4) Without the wrap-around services, staff struggles to classify this as a group home in a manner that is separate from just classifying this as a dormitory, which is typically UU 26, and not permitted in RSF-4. Please let me know what you intend to pursue. RSF-4 permits up to 3 unrelated people to live together in a single-family home.

- Dormitories are also an included use in UU4. We do not intend to pursue a UU26 as there are many substantial differences. We find that the ISCA House's standing and reputation as a non-profit organization rather than a commercial entity is meaningful for community integration. The ISCA House will operate as a clubhouse and lodging that promotes the common objectives of both accessible higher education and the furthering of spiritual development for international graduate students in a home-like setting.

5) How/where is parking handled? Staff would recommend that no more than 4 vehicles are parked outside at any given time, in a manner consistent with 172.11 for single-family homes.

- Most, if not all, residents and ISCA members do not have cars nor driver's licenses. Historically, ISCA students will likely not own vehicles nor possess driver's licenses due to cost and visa requirements (International graduate students are not permitted to be gainfully employed off campus, *which makes the cost burden of owning and operating a vehicle out of their reach*). Parking needs will be minimal and the property already has four concrete parking stalls off of Center Street.

Revision Schedule		
Rev. #	Date	Description

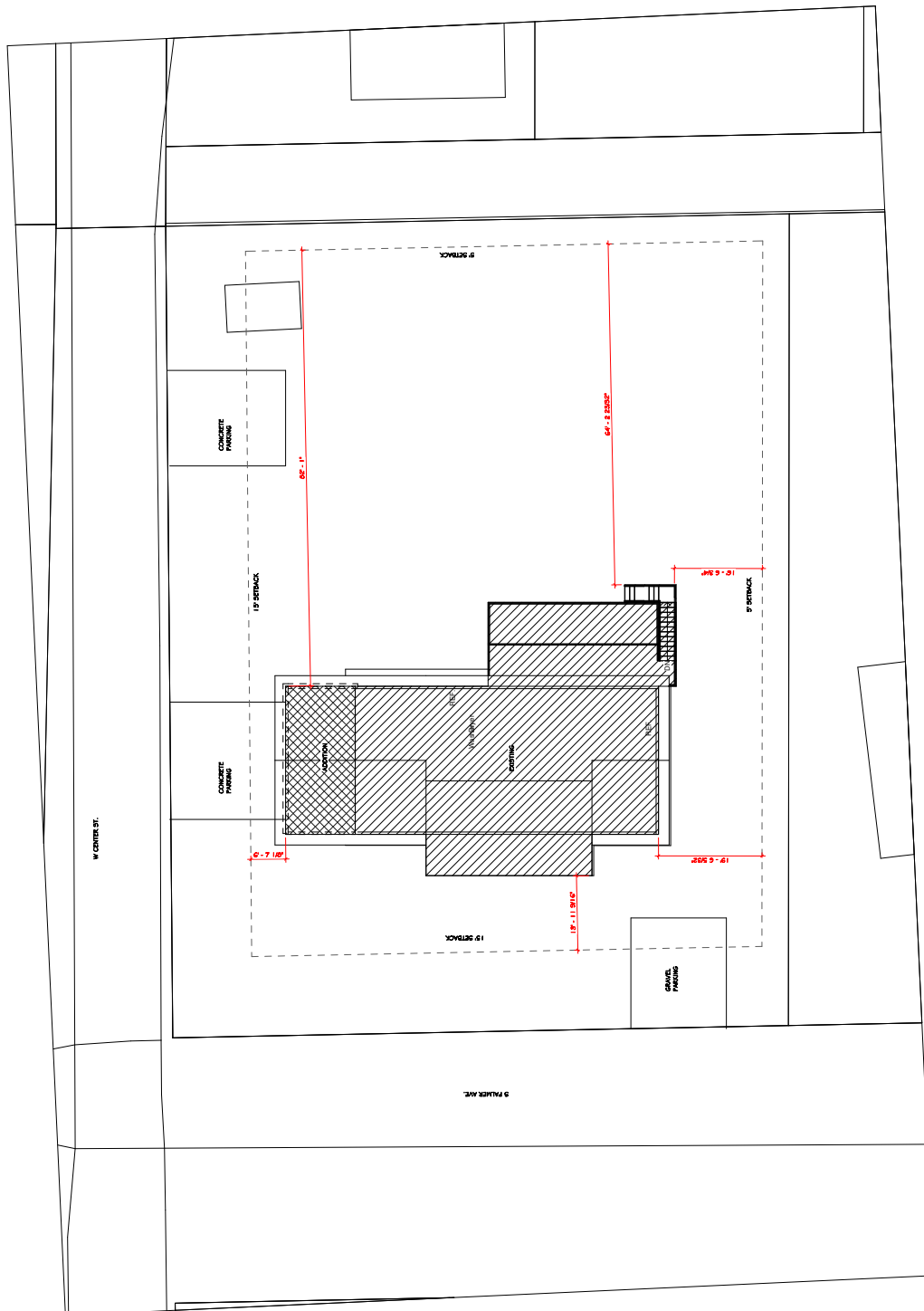
PALMER NEW ADDITION
10 S PALMER AVE.
FAYETTEVILLE, AR 72701

DATE 04/03/24	DRAWN BY ELP
PROJECT # 2344	CHECKED BY JTK
SHEET	

A0.1

SITE PLAN

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1 SITE PLAN
SCALE = 1" = 10'-0"

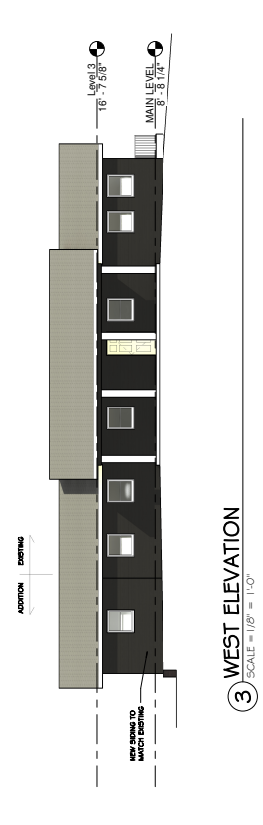
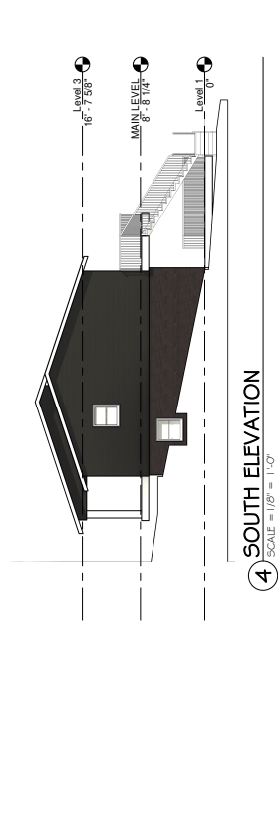
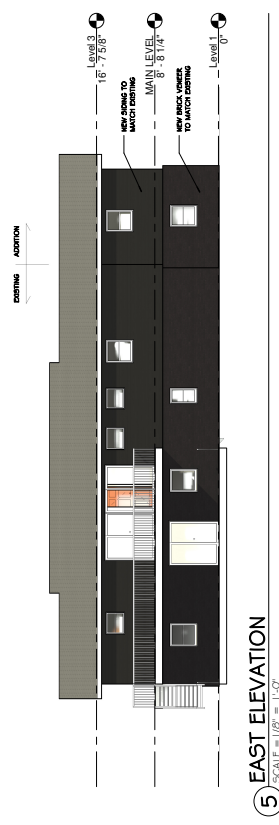
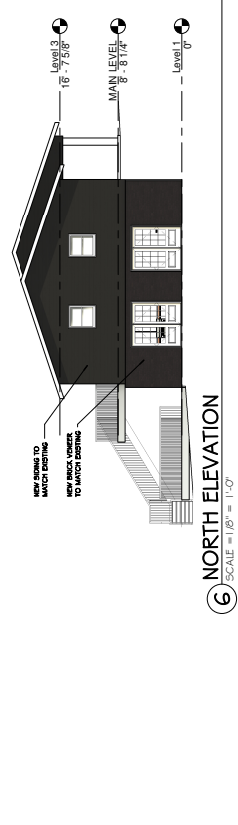
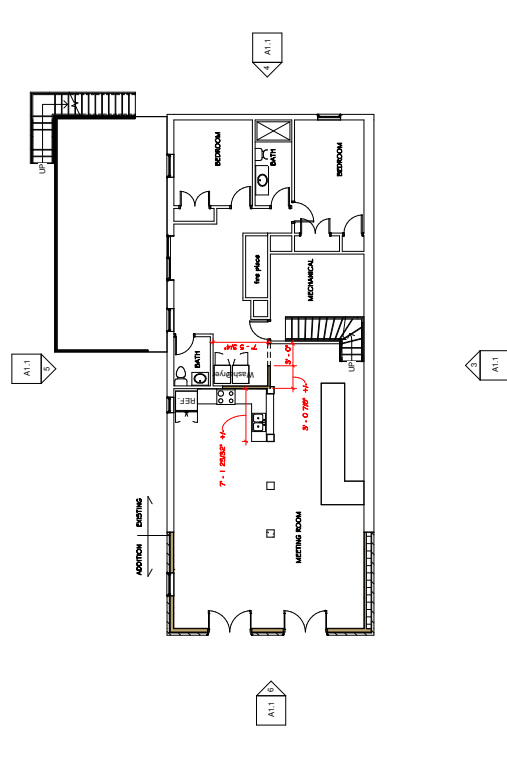
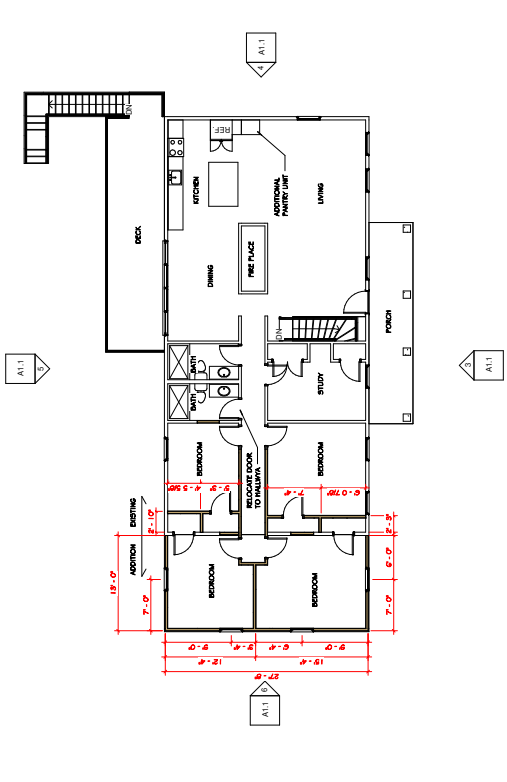
FOR REVIEW

Rev.	#	Date	Description

PALMER NEW ADDITION
10 S PALMER AVE.
FAYETTEVILLE, AR 72701
STEPHEN BEYKIRICH
312 S BROOKLYN CT
FRONTENAC, KS 66763

DATE	DRAWN BY	ELP
04/03/24	PROJECT #	234
CHECKED BY		JTK
SHEET		A1.1

PLANS AND ELEVATIONS
This drawing is to be used in accordance with the specifications and conditions of contract.
It is not to be used for any other purpose without the written consent of the architect.





To: Jesse Masters, Planner
CC: Battalion Chief Jeremy Ashley, Fire Marshal
From: Captain Andrew Horton, Deputy Fire Marshal
Date: 4/22/2024

CUP-2024-0017: 10 S Palmer Ave Fayetteville AR 72701

During the review of this CUP, determined to be a change of occupancy from a single-family dwelling to a multi-family dwelling / assembly occupancy. Due to the change in use, this project will need to conform to the International Building Code (IBC) meeting the needs of fire protection/ separation. The applicant will need to submit formal plans for review.

From: Werner, Nick <nick.werner@fayetteville-ar.gov>
Sent: Tuesday, May 7, 2024 1:13 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: (CUP-2024-0017) 10 S Palmer - venue use

I got some feedback on, I believe, CUP-2024-0017 that's included below.

-Nick

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Monday, May 6, 2024 11:50
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Cc: Karen Pears <@gmail.com>
Subject: Re: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you so much for your great service on our behalf - it is appreciated!

My wife and I bought our home with the promise by the City of Fayetteville that we were buying a home in a single family residence neighborhood - SF4.... And, we love living in Fayetteville because of the thought going into grouping life into use areas.... We rely on this thoughtful planning...

FYI - the application states the intended use for 10 S Palmer is for "...assemblies and gatherings..." making it a venue - in a single family residence zone.... This is a conference center/meeting hall - a Venue...

This location was turned down previously by both the planning commission and the city council - primarily because fire and ambulance access is limited for this neighborhood due to unenforceable parking.... Nothing has changed...

So first - the request is for a commercial use in a residential zone....

And second - venues bring more parking problems not less - limiting access for fire and ambulance services to the neighborhood...

Third - it doesn't seem that anyone is thinking about the demand these commercial use place on what was planned as a neighborhood - meaning this commercial use of sewer, water, roads, electrical, etc is of higher demand than was built into our neighborhood...

If you see it differently, would love your perspective...

Thanks again for all you do!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

On May 5, 2024, at 7:06 PM, Werner, Nick <nick.werner@fayetteville-ar.gov> wrote:

Hi Tom,

I appreciate you reaching out about this item. It looks like the conditional use permit (CUP-2024-0017) for 10 S Palmer Ave is scheduled for the next Planning Commission meeting on the 13th. For now, I don't know much about this project but I'd be happy to get the documents that the City's planning staff has to review while they're preparing the final report for the commission.

In the meantime, I'd love to hear your thoughts on the project or help track down answers to any of your questions.

Have a great night,

-Nick Werner

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Tuesday, April 30, 2024 2:08:13 PM
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Subject: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

From: Masters, Jessica
Sent: Friday, May 3, 2024 11:35 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Any and all requirements for ADA will be fully evaluated at the time of a building permit submittal, and are typically handled by the Building Safety Division.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 6:02 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

In addition to fire (sprinklers and detectors) - Into "...compliance..." would include ADA - doorways, bath access, ramps, lifts-elevators...right?

Thanks!
T pears

PS You and yours are the best!

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 4:50 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honestly - part of our thankfulness related to living here is that Fayetteville takes serious the covenant/assurance that this city groups purposes together for good living...

I am confused why we seem to be continually challenged for obvious uses that don't fit in this neighborhood...this use...

This is a request to put a venue in a neighborhood.... With this in mind, I am good to be a wedding venue, right?

Or said another way - pls defend the city's promise that 10 S Palmer is to be used as a single family residence...

Thank you so much for your work...it is appreciated!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

Begin forwarded message:

From: "Masters, Jessica" <jmasters@fayetteville-ar.gov>
Date: May 2, 2024 at 4:40:23 PM CDT
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

They will be required to bring anything into compliance with existing and applicable building codes. They've already been notified by the Fire Department that in order to operate as an assembly space, sprinklers will be necessary.

The previous request was for the use of the property as a short-term rental (AirBNB), which is classified as a different use, which different items for consideration. That item was ultimately appealed to and denied by the City Council on September 5. For more information about the City Council discussion, I recommend viewing the video at this link: <https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7955?seekto=7126&site=1>

Let me know if you have any additional questions.

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Wednesday, May 1, 2024 10:37 AM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ok...thanks....

Since this is a conference center - are they proposing to bring it up to a commercial use code - ADA and fire code compliance...lifts and ramps access, sprinkler systems, fire extinguishers, exits, etc...?

Also - as to the question of how many would be housed was addressed in the last denial - impact on public safety.... Fire and ambulance access during gatherings and resident occupation (with guests).... As well as, undue strain on neighborhood public services - roads, water, sewer, etc was designed for the number of users...

Am I right in this thinking?

Tom Pears

Pears Consulting

Fayetteville, Arkansas

337-322-9260 cell

From: Masters, Jessica
Sent: Wednesday, May 1, 2024 10:28 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Yes, I believe that is more or less what the request is, but again, we are still waiting for specifics from the applicant on how many people they intend to house at this location and how often they intend to meet.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Wednesday, May 1, 2024 9:00 AM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Thank you for clarity...

Again - the request is for a venue/conference center for “assemblies and gatherings”...and it appears to be for multiple residents beyond the 3-4 unrelated as applied previously....

So I am correct to understand that - the request is for a VENUE/CONFERENCE CENTER for assemblies and gatherings...in a neighborhood....

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On May 1, 2024, at 8:32 AM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

We are still waiting on specifics from the applicant, but from what we are able to understand, they intend to use the space to house international students and also host assemblies and gatherings. So, it will not be a strictly residential use, which is why they are requesting the conditional use permit in the RSF-4 zoning district for a cultural and recreational facility, under which things like certain dormitories, churches and other institutional uses are held.

If this use is permitted, they would not be subject to the same limitation of number of residents as if it were a single-family home. The definition of "family" does not extend to clubs or institutional groups in our zoning code. Their plans indicate 6 bedrooms, so an assumption may be, without further clarification yet from the applicant, may be that they intend to have 6 students living at the facility at any given time. When making a recommendation on the overall compatibility of the request, this is certainly information that staff would need to help make a recommendation.

If you have further questions, please feel free to contact me directly, or if you have comments that you wish for the Planning Commission to consider, I am happy to receive that as well. I've left the full definition of family below.

"Family (zoning). In R-A, Neighborhood Conservation and all single family districts including single family Planned Zoning Districts, a "family" is no more than three (3) persons unless all are related and occupy the dwelling as a single housekeeping unit. In all other zoning districts where residential uses are permitted, a "family" is no more than four (4) persons unless all are related and occupy the dwelling as a single housekeeping unit with the exception that the City Council may permit a definition of "family" as no more than five (5) persons unless all are related and occupy the dwelling as a single housekeeping unit in a specific Planned Zoning District with proper safeguards for the surrounding neighborhood such as applying the parking requirements of §172.11 (even though this is a multifamily PZD), requiring that each five (5) person unit must be placed within a freestanding structure of not more than two (2) stories and be buffered from other residential districts outside the Planned Zoning District. The City Council shall consider whether an applicant's PZD with one (1) or more five (5) unrelated person structures would cause unreasonable traffic into an adjoining residential neighborhood before approving any such PZD. Persons are "related" for purposes of this definition if they are related by blood, marriage, adoption, guardianship, or other duly-authorized custodial relationship. **The definition of "family" does not include fraternities, sororities, clubs or institutional groups."**

Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 5:06 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Again thank you for your kind responsiveness...it is so appreciated!

Respectfully - "...additional supportive events..." means in laymen terms - a venue...a commercial use.... Right?

Further - housing would be limited to 3 unrelated renters?

Pls advise if I am clear in my understanding...

Thank you!

T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 4:57 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

Staff's assumption right now is that they intend to use the property for housing international students with additional supportive events for those living at the residence. We do not yet have any additional information about how often they intend to have outside events, but they have been

informed by the Fire department that if they intend to use this as an event center they may/will need to make modifications to the structure to meet applicable fire code.

As far as neighborhood compatibility, which is what is being evaluated with the conditional use permit, staff has requested additional information to be provided by the applicant to answer questions about how many people they intend to live at this facility, how often they intend to host events, and how they intend to provide parking.

Please let me know if you have any additional questions. Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 4:24 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jessica;

Thank you so much for the quick response - and the great work you and your staff do to make Fayetteville a great place to live and work....

Also thank you for the back up materials...much appreciated!

So to be clear from the first line of the request " Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA's outreach program..":

1. They acknowledge this is an SF4 zone,
2. They wish to run an outreach business from the location - a commercial use?

Meaning the request is to convert a single family residence into an outreach meeting place and venue...a commercial use...right?

Pls advise...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 4:13 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Good afternoon,

Thank you for the inquiry on the proposed conditional use permit for a cultural and recreational facility at 10 S. Palmer. I did receive your voicemail as well, but figured it may be just as easy to respond via email.

I've attached the applicant's materials for your consideration for CUP-2024-0017. Staff is still evaluating the request in its entirety, and working with the applicant to understand the full scope of the request, so we do not yet have an initial recommendation on the item. A final staff report will be published at the 4:30 PM agenda session on Thursday, May 9.

The item is scheduled to be heard at the May 13 Planning Commission meeting, beginning at 5:30 PM. Members of the public are invited to attend the meeting either in-person in room 219 in City Hall (113 W. Mountain Street), or virtually via zoom. Information about how to attend virtually can be found [here](#).

Staff is also available to answer questions, or take public comment either over the phone or via email. All comments we receive are forwarded to the Planning Commission for their consideration as well.

Many thanks,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)
<image001.png>

From: Mulford, Patti <pmulford@fayetteville-ar.gov>
Sent: Tuesday, April 30, 2024 2:56 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>
Subject: FW: 10 S Palmer - venue use

fyi

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Tuesday, April 30, 2024 2:49 PM
To: Mulford, Patti <pmulford@fayetteville-ar.gov>
Cc: Karen Pears <lovingt3andt4@gmail.com>
Subject: Re: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

First - thank you for the quick response!

Second - pls thank the mayor for his great work!

Third - have reached out to planning - waiting for a callback from Ms. Masters...

As an fyi - it seems the CUP is to operate a venue/meeting place in the midst of a single family residence 4 zone.... Wanted the mayors take - but certainly wanted him to be aware....

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 2:36 PM, Mulford, Patti <pmulford@fayetteville-ar.gov> wrote:

Hi Tom,

Thank you for your email. Mayor Jordan would like to refer you to our Planning staff for any additional information you may need. Thanks.

Patti Mulford

Compiled Public Comment
CUP-2024-0017

Assistant to Mayor
113 W. Mountain St.
Fayetteville, AR 72701
479.575.8330

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Tuesday, April 30, 2024 2:13 PM
To: Mayor <Mayor@fayetteville-ar.gov>
Cc: Karen Pears <lovingt3andt4@gmail.com>
Subject: 10 S Palmer - venue use

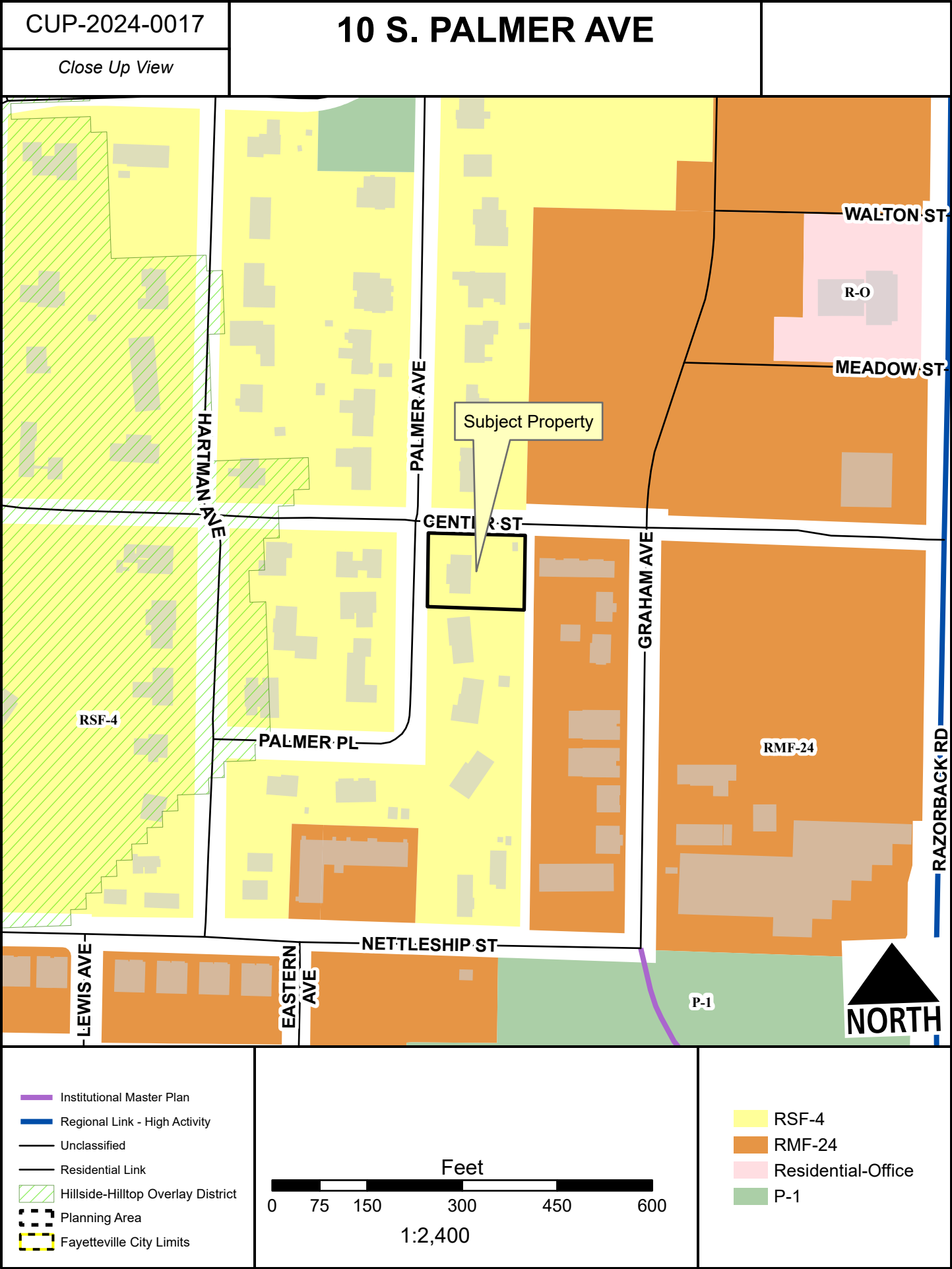
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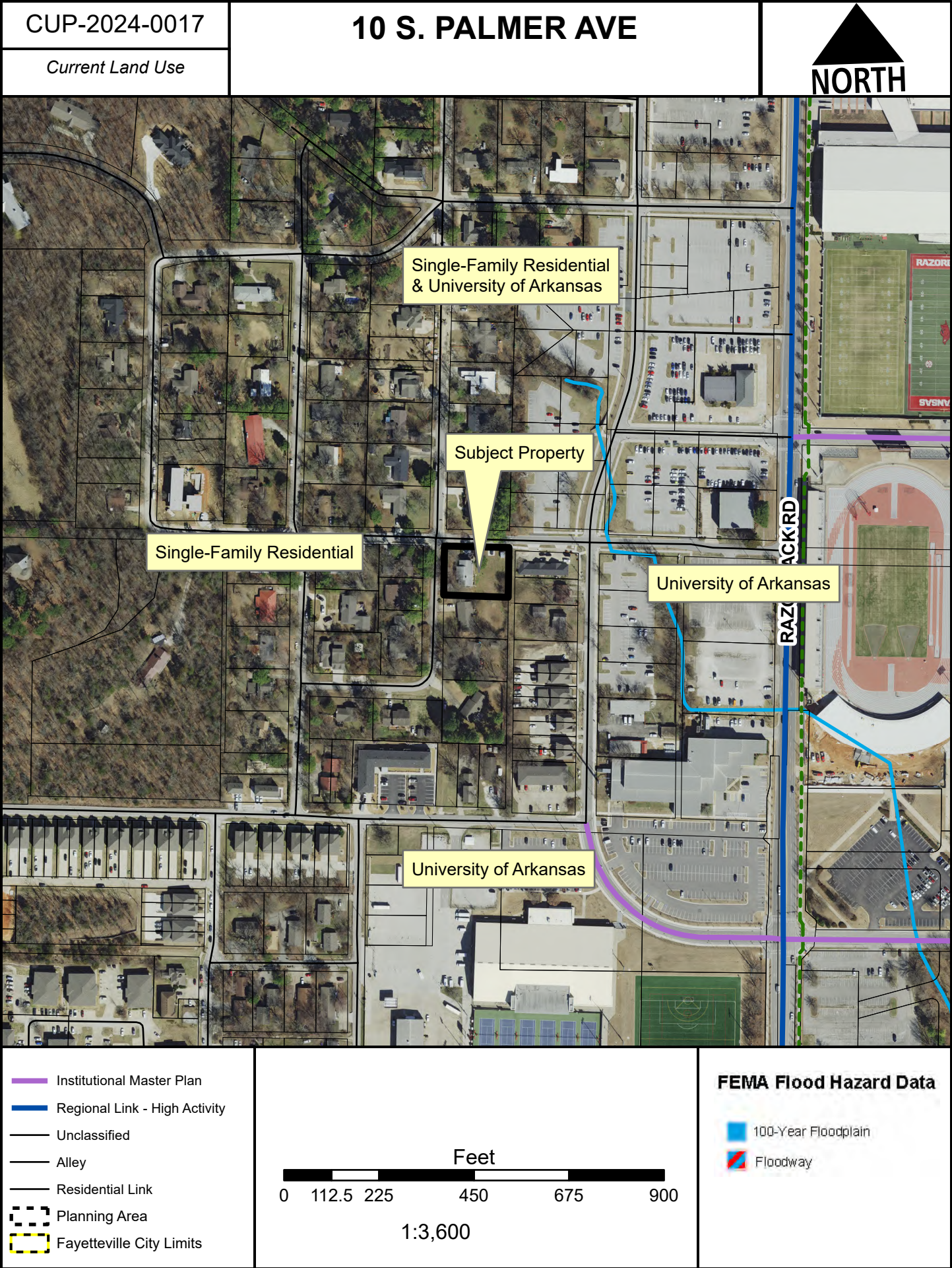
Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell





Dear Planning commissioner,

We (my husband and I) moved to Arkansas 5 years ago. We are absolutely in love with Fayetteville. We bought our home in the University Heights area. We feel very blessed to be near the action of the events offered near us. The restaurants, the theaters, the university games, all walking distance from our home.

Our neighborhood is filled with elderly, young families, UA students, and retirees. We are a small neighborhood consisting of only about 6 streets. We all walk our streets with our loved ones, our pets, our grandchildren.

The UA mens and women's track teams practice on our streets as well as the Ramey Jr. High track teams. We have treacherous hills for strength building but mostly, a low traffic area for safety for them to workout.

Our neighborhood is an awesome place to be. Lots of..."Hi there," as you go by...or a shout out to the runners, "You can do it!" Or a "You're almost there!" A Norman Rockwell atmosphere.

Illegal (on both sides of streets...& on Palmer & Center, which is to have No parking). parking has always (in our 5 years here,) been a big concern with all of the foot traffic. Also, Not allowing emergency vehicles pass in times.of need, if parking blocks the road.

We met with you guys back in July and Sept. of last year voicing our concerns about 10 Palmer wanting a type 2 VRBO. The traffic, the sewage use, the water use, the abuse of street traffic was harming the quality of life here. You agreed and voted NO for for 10 Palmer to be a type 2 VRBO. Now, the owner of 10 Palmer is wanting a Commercial Company to buy his house. They are wanting a venue/sorority house!

Yes, I understand the owner wanting to sell 10 Palmer to get the money he invested, before he got permitted for the type 2 VRBO investment, which was denied. But now to ask for a Commercial Venue/sorority, that is more damning to our Single Family 4 zone neighborhood! Bringing more cars, more parking issues, more use on old sewage pipes, more use of water, more wear and tear on our roads.

We are blessed to have a toddler park in our neighborhood only 1 block from 10 Palmer. Bringing more people & all that comes with it, more traffic, puts these children in harms way. We know we are being told these new residence do not have many cars. (But they will have guest with cars!). But that is today. Tomorrow or next semester, or when they sell to another "venue" that surely will not be the case! The fact is....A venue/sorority will bring more cars and more people, which will bring more problems to the neighborhood.

Please, we are asking that we keep our charming, walking, running, social, peaceful, quiet neighborhood, just that. Allowing this sorority/venue will only bring more stress from more cars, more speeding, more blind spots, more noise, more pot holes, more wear and tear on our Utilities! WE are asking that your honor our covenant we made with you when we made Fayetteville our home when we bought our home here. Here in a SF4 Zone. WE bought our home purposefully in this are labeled single family 4 zone. Not commercial. Single family means safer, for me & mine. It was a

Compiled Public Comment
CUP-2024-0017

conscious decision. Please do not take our Historic peaceful quite, safe neighborhood & over crowd it. Please do not make it commercial. Please do not destroy our quality of life here.

Please vote NO to this commercial Request to ISCA (who every that is?) . Please keep your promise to us and keep University Heights Neighborhood, a Single Family 4 neighborhood.

Thank you very much, Karen Pears

From: Werner, Nick <nick.werner@fayetteville-ar.gov>
Sent: Tuesday, May 7, 2024 1:13 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: (CUP-2024-0017) 10 S Palmer - venue use

I got some feedback on, I believe, CUP-2024-0017 that's included below.

-Nick

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Monday, May 6, 2024 11:50
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Cc: Karen Pears <@gmail.com>
Subject: Re: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you so much for your great service on our behalf - it is appreciated!

My wife and I bought our home with the promise by the City of Fayetteville that we were buying a home in a single family residence neighborhood - SF4.... And, we love living in Fayetteville because of the thought going into grouping life into use areas.... We rely on this thoughtful planning...

FYI - the application states the intended use for 10 S Palmer is for "...assemblies and gatherings..." making it a venue - in a single family residence zone.... This is a conference center/meeting hall - a Venue...

This location was turned down previously by both the planning commission and the city council - primarily because fire and ambulance access is limited for this neighborhood due to unenforceable parking.... Nothing has changed...

So first - the request is for a commercial use in a residential zone....

And second - venues bring more parking problems not less - limiting access for fire and ambulance services to the neighborhood...

Third - it doesn't seem that anyone is thinking about the demand these commercial use place on what was planned as a neighborhood - meaning this commercial use of sewer, water, roads, electrical, etc is of higher demand than was built into our neighborhood...

If you see it differently, would love your perspective...

Thanks again for all you do!

T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

On May 5, 2024, at 7:06 PM, Werner, Nick <nick.werner@fayetteville-ar.gov> wrote:

Hi Tom,

I appreciate you reaching out about this item. It looks like the conditional use permit (CUP-2024-0017) for 10 S Palmer Ave is scheduled for the next Planning Commission meeting on the 13th. For now, I don't know much about this project but I'd be happy to get the documents that the City's planning staff has to review while they're preparing the final report for the commission.

In the meantime, I'd love to hear your thoughts on the project or help track down answers to any of your questions.

Have a great night,

-Nick Werner

Get [Outlook for iOS](#)

From: Tom Pears <@gmail.com>
Sent: Tuesday, April 30, 2024 2:08:13 PM
To: Werner, Nick <nick.werner@fayetteville-ar.gov>
Subject: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

From: Masters, Jessica
Sent: Friday, May 3, 2024 11:35 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Any and all requirements for ADA will be fully evaluated at the time of a building permit submittal, and are typically handled by the Building Safety Division.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 6:02 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

In addition to fire (sprinklers and detectors) - Into "...compliance..." would include ADA - doorways, bath access, ramps, lifts-elevators...right?

Thanks!
T pears

PS You and yours are the best!

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Thursday, May 2, 2024 4:50 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honestly - part of our thankfulness related to living here is that Fayetteville takes serious the covenant/assurance that this city groups purposes together for good living...

I am confused why we seem to be continually challenged for obvious uses that don't fit in this neighborhood...this use...

This is a request to put a venue in a neighborhood.... With this in mind, I am good to be a wedding venue, right?

Or said another way - pls defend the city's promise that 10 S Palmer is to be used as a single family residence...

Thank you so much for your work...it is appreciated!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

Begin forwarded message:

From: "Masters, Jessica" <jmasters@fayetteville-ar.gov>
Date: May 2, 2024 at 4:40:23 PM CDT
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

They will be required to bring anything into compliance with existing and applicable building codes. They've already been notified by the Fire Department that in order to operate as an assembly space, sprinklers will be necessary.

The previous request was for the use of the property as a short-term rental (AirBNB), which is classified as a different use, which different items for consideration. That item was ultimately appealed to and denied by the City Council on September 5. For more information about the City Council discussion, I recommend viewing the video at this link: <https://reflect-fayetteville-ar.cablecast.tv/CablecastPublicSite/show/7955?seekto=7126&site=1>

Let me know if you have any additional questions.

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)
<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Wednesday, May 1, 2024 10:37 AM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Ok...thanks....

Since this is a conference center - are they proposing to bring it up to a commercial use code - ADA and fire code compliance...lifts and ramps access, sprinkler systems, fire extinguishers, exits, etc...?

Compiled Public Comment
CUP-2024-0017

Also - as to the question of how many would be housed was addressed in the last denial - impact on public safety.... Fire and ambulance access during gatherings and resident occupation (with guests).... As well as, undue strain on neighborhood public services - roads, water, sewer, etc was designed for the number of users...
Am I right in this thinking?

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

From: Masters, Jessica
Sent: Wednesday, May 1, 2024 10:28 AM
To: Tom Pears <pearsconsulting@gmail.com>
Subject: RE: 10 S Palmer - venue use - CUP-2024-0017

Tom,

Yes, I believe that is more or less what the request is, but again, we are still waiting for specifics from the applicant on how many people they intend to house at this location and how often they intend to meet.

Thank you,

Jessie

Jessie Masters, AICP
Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239
www.fayetteville-ar.gov
[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>
Sent: Wednesday, May 1, 2024 9:00 AM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>
Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Thank you for clarity...

Again - the request is for a venue/conference center for "assemblies and gatherings"...and it appears to be for multiple residents beyond the 3-4 unrelated as applied previously....

So I am correct to understand that - the request is for a VENUE/CONFERENCE CENTER for assemblies and gatherings...in a neighborhood....

Tom Pears

Pears Consulting

Fayetteville, Arkansas

337-322-9260 cell

On May 1, 2024, at 8:32 AM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

We are still waiting on specifics from the applicant, but from what we are able to understand, they intend to use the space to house international students and also host assemblies and gatherings. So, it will not be a strictly residential use, which is why they are requesting the conditional use permit in the RSF-4 zoning district for a cultural and recreational facility, under which things like certain dormitories, churches and other institutional uses are held.

If this use is permitted, they would not be subject to the same limitation of number of residents as if it were a single-family home. The definition of "family" does not extend to clubs or institutional groups in our zoning code. Their plans indicate 6 bedrooms, so an assumption may be, without further clarification yet from the applicant, may be that they intend to have 6 students living at the facility at any given time. When making a recommendation on the overall compatibility of the request, this is certainly information that staff would need to help make a recommendation.

If you have further questions, please feel free to contact me directly, or if you have comments that you wish for the Planning Commission to consider, I am happy to receive that as well. I've left the full definition of family below.

"Family (zoning). In R-A, Neighborhood Conservation and all single family districts including single family Planned Zoning Districts, a "family" is no more than three (3) persons unless all are related and occupy the dwelling as a single housekeeping unit. In all other zoning districts where residential uses are permitted, a "family" is no more than four (4) persons unless all are related and occupy the dwelling as a single housekeeping unit with the exception that the City Council may permit a definition of "family" as no more than five (5) persons unless all are related and occupy the dwelling as a single housekeeping unit in a specific Planned Zoning District with proper safeguards for the surrounding neighborhood such as applying the parking requirements of §172.11 (even though this is a multifamily PZD), requiring that each five (5) person unit must be placed within a freestanding structure of not more than two (2) stories and be buffered from other residential

districts outside the Planned Zoning District. The City Council shall consider whether an applicant's PZD with one (1) or more five (5) unrelated person structures would cause unreasonable traffic into an adjoining residential neighborhood before approving any such PZD. Persons are "related" for purposes of this definition if they are related by blood, marriage, adoption, guardianship, or other duly-authorized custodial relationship. **The definition of "family" does not include fraternities, sororities, clubs or institutional groups."**

Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager
City of Fayetteville, Arkansas
(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 5:06 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Again thank you for your kind responsiveness...it is so appreciated!

Respectfully - "...additional supportive events..." means in laymen terms - a venue...a commercial use.... Right?

Further - housing would be limited to 3 unrelated renters?

Pls advise if I am clear in my understanding...

Thank you!

T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas

337-322-9260 cell

On Apr 30, 2024, at 4:57 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Tom,

Staff's assumption right now is that they intend to use the property for housing international students with additional supportive events for those living at the residence. We do not yet have any additional information about how often they intend to have outside events, but they have been informed by the Fire department that if they intend to use this as an event center they may/will need to make modifications to the structure to meet applicable fire code.

As far as neighborhood compatibility, which is what is being evaluated with the conditional use permit, staff has requested additional information to be provided by the applicant to answer questions about how many people they intend to live at this facility, how often they intend to host events, and how they intend to provide parking.

Please let me know if you have any additional questions. Thank you,

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

(479) 575-8239

www.fayetteville-ar.gov

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 4:24 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>; Mulford, Patti <pmulford@fayetteville-ar.gov>; Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use - CUP-2024-0017

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Jessica;

Thank you so much for the quick response - and the great work you and your staff do to make Fayetteville a great place to live and work....

Also thank you for the back up materials...much appreciated!

So to be clear from the first line of the request “ Through this conditional use, the property, which is currently designated as a single-family residence, would serve as the home base for ISCA’s outreach program..”:

1. They acknowledge this is an SF4 zone,
2. They wish to run an outreach business from the location - a commercial use?

Meaning the request is to convert a single family residence into an outreach meeting place and venue...a commercial use...right?

Pls advise...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

On Apr 30, 2024, at 4:13 PM, Masters, Jessica <jmasters@fayetteville-ar.gov> wrote:

Good afternoon,

Thank you for the inquiry on the proposed conditional use permit for a cultural and recreational facility at 10 S. Palmer. I did receive your voicemail as well, but figured it may be just as easy to respond via email.

I’ve attached the applicant’s materials for your consideration for CUP-2024-0017. Staff is still evaluating the request in its entirety, and working with the applicant to understand the full scope of the request, so we do not yet have an initial recommendation on the item. A final staff report will be published at the 4:30 PM agenda session on Thursday, May 9.

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Many thanks,

Jessie

Jessie Masters, AICP

Development Review Manager

City of Fayetteville, Arkansas

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[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

<image001.png>

From: Mulford, Patti <pmulford@fayetteville-ar.gov>

Sent: Tuesday, April 30, 2024 2:56 PM

To: Masters, Jessica <jmasters@fayetteville-ar.gov>

Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>

Subject: FW: 10 S Palmer - venue use

fyi

From: Tom Pears <pearsconsulting@gmail.com>

Sent: Tuesday, April 30, 2024 2:49 PM

To: Mulford, Patti <pmulford@fayetteville-ar.gov>

Cc: Karen Pears <lovingt3andt4@gmail.com>

Subject: Re: 10 S Palmer - venue use

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First - thank you for the quick response!

Second - pls thank the mayor for his great work!

Third - have reached out to planning - waiting for a callback from Ms. Masters...

As an fyi - it seems the CUP is to operate a venue/meeting place in the midst of a single family residence 4 zone.... Wanted the mayors take - but certainly wanted him to be aware....

Thank you!

T pears

Tom Pears

Pears Consulting

Fayetteville, Arkansas

337-322-9260 cell

Compiled Public Comment
CUP-2024-0017

On Apr 30, 2024, at 2:36 PM, Mulford, Patti <pmulford@fayetteville-ar.gov> wrote:

Hi Tom,

Thank you for your email. Mayor Jordan would like to refer you to our Planning staff for any additional information you may need. Thanks.

Patti Mulford
Assistant to Mayor
113 W. Mountain St.
Fayetteville, AR 72701
479.575.8330

From: Tom Pears <pearsconsulting@gmail.com>
Sent: Tuesday, April 30, 2024 2:13 PM
To: Mayor <Mayor@fayetteville-ar.gov>
Cc: Karen Pears <lovingt3andt4@gmail.com>
Subject: 10 S Palmer - venue use

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon good public servant!

I live at 1634 W Hotz - if you have time to talk about the conditional use permit for 10 S Palmer.... As a good neighbor, I would like to understand your thoughts on this request...

Thank you!
T pears

Tom Pears
Pears Consulting
Fayetteville, Arkansas
337-322-9260 cell

5/10/24

Planning Commission Members
Attn: Andrew Brink

Ref: CUP 2024-0017

Dear Members:

The purpose of this letter is to ask the commission to protect the integrity of our neighborhood from adverse uses and zoning changes inconsistent with its original RSF-4 intent. At a minimum, this request (CUP 2024-0017) should be delayed to allow deeper research and assessment of its impact. As with the STR issue the city should thoroughly examine and modify ordinances/rules to protect the investments neighborhood residents have consistent with living in a RSF-4 area.

The CUP appears to be primarily for a social venue with proposed activities not compatible with RSF-4. Pressures for exceptions are sure to continue with the UofA's growth plans. Your review and amendment process for STR rules rendered an acceptable result for most pending

(2)

future enforcement of course. The same applies in this case and it presents the opportunity to be more proactive than the STR process. I also assume a facility like requested will comply with all city, state and federal regulations regarding similar venues?

Thanks for letting me share my concerns at this juncture.

Sincerely,



W.L. BRADLEY

1738 W. Pratt Dr.

May 13, 2024

City of Fayetteville, Arkansas

Attn: Jessie Masters

Development Review Manager

Dear Ms. Masters,

I am the Pastor of Fellowship Fayetteville, located at 3447 AR- 112, Fayetteville, AR.

The International Christian Student Association has been serving the University of Arkansas and International college students since its founding, in 1982.

ISCA will be a great neighbor at 10 Palmer in Fayetteville, just as they have been at 89 Duncan Ave, and we urge the planning commission to grant approval of ISCA's request for Conditional Use Permit at its future home on Palmer.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Clark Nolen', with a long horizontal flourish extending to the right.

Clark Nolen

Fellowship Fayetteville

May 13, 2024

City of Fayetteville, Arkansas

Attn: Jessie Masters

Development Review Manager

Dear Ms. Masters,

I have owned 77 S. Duncan in Fayetteville since 1993. The International Student Christian Association house is directly across Treadwell from my property. I.S.C.A. and its residents have always been great neighbors.

Please accept this letter of my full endorsement of I.S.C.A., who has been a wonderful part of our community and neighborhood.

Sincerely,

John Adam

9 May 2024

Dear members of the city council and planning committee members,

We are writing to express our whole hearted support of the conditional use application ((Use Unit 4 - cultural and recreational facilities) for 10 South Palmer Ave. My wife and I reside at 35 South Hartman Ave, one block due west of the S. Palmer property. We have lived at this address for over twenty years and are very well acquainted with the neighborhood and worked hard over the years to be good neighbors and support others seeking the same. Seeing this particular property used in the manner they are seeking is a "best use" case and would be a welcome addition to the neighborhood.

Our reasons for supporting the approval are three-fold. First, most of the houses on Palmer, Hartman, Garvin and Hotz are operating as de facto student housing without permission or proper permitting. The fact that the potential owners are following the regulations in obtaining prior permission is commendable and sets a clear example for others in the neighborhood.

Second, the property is ideal for the proposed use and will lessen the impact on noise, parking and overall upkeep from the previous owners, and is a much better than a short-term rental.

Last, this will in a very small but meaningful way mitigate the loss of affordable housing from the proposed development on Duncan and Treadwell as well as the desperate overall need our city has for affordable housing. Through this conditional use, the property would serve as the home base for ISCA's outreach program of providing fundamental resources to international graduate students pursuing advanced degrees. ISCA aids its members, many of which are coming from politically sensitive nations, through the provision of housing, meals, and transportation as well as spiritual, social, and educational guidance and support services.

Again, we heartily welcome such a property into our neighborhood.

Sincerely,

John and Jane Ray

35 South Hartman Ave

Fayetteville, AR 72701

rayfamily@sbcglobal.net

(479) 466-5937

April 30, 2024

To whom it may concern,

I am the owner of #9 S. Palmer Ave, Fayetteville, AR. Please accept this letter as acknowledgement that I support the International Student Christian Association's Conditional Use Permit request, and believe they will be a great addition to Leflar's Addition.

Should you have further question regarding this matter, please do not hesitate to contact me at 479-253-2265.

Charles Cross

CTC Holdings

May 10th, 2024

Jessie Masters, Planner-City of Fayetteville,

My name is Mark Pryor and I am the owner of 65 S Duncan. The I.S.C.A., residents at 89 S. Duncan, have been a wonderful addition to this neighborhood. They have been respectful and integrated nicely into the surrounding community. I would highly recommend them as neighbors.

Thank you,

A handwritten signature in black ink, appearing to read "Mark Pryor". The signature is stylized with a large, looped "M" and a cursive "Pryor".

April 30, 2024

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I am the owner of #9 S. Palmer Ave, Fayetteville, AR. Please accept this letter as acknowledgement that I support the International Student Christian Association's Conditional Use Permit request, and believe they will be a great addition to Leflar's Addition.

Should you have further question regarding this matter, please do not hesitate to contact me at 479-253-2265.

A handwritten signature in black ink, appearing to be 'Charles Cross', written in a cursive style.

Charles Cross

CTC Holdings

May 13, 2024

City of Fayetteville, Arkansas
Attn: Jessie Masters
Development Review Manager

Dear Jessie,

I am writing you a letter in support of the International Christian Student Association (ISCA) in Fayetteville.

ISCA positively impacted the lives of international MBA students at the University of Arkansas for many years at their house at 89 Duncan Ave.

ISCA will be a great neighbor at 10 Palmer in Fayetteville, just as they have been at 89 Duncan Ave, and we urge the planning commission to grant approval of ISCA's request for Conditional Use Permit at its future home on Palmer.

Sincerely,

Lyndy Lindsey

Lindsey and Associates

Route 11 Peak 2022



#10 S Palmer Ave

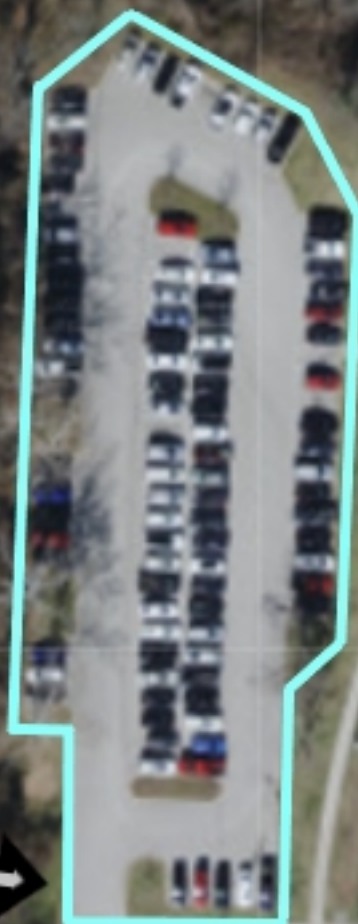
Route 11 Peak 2022

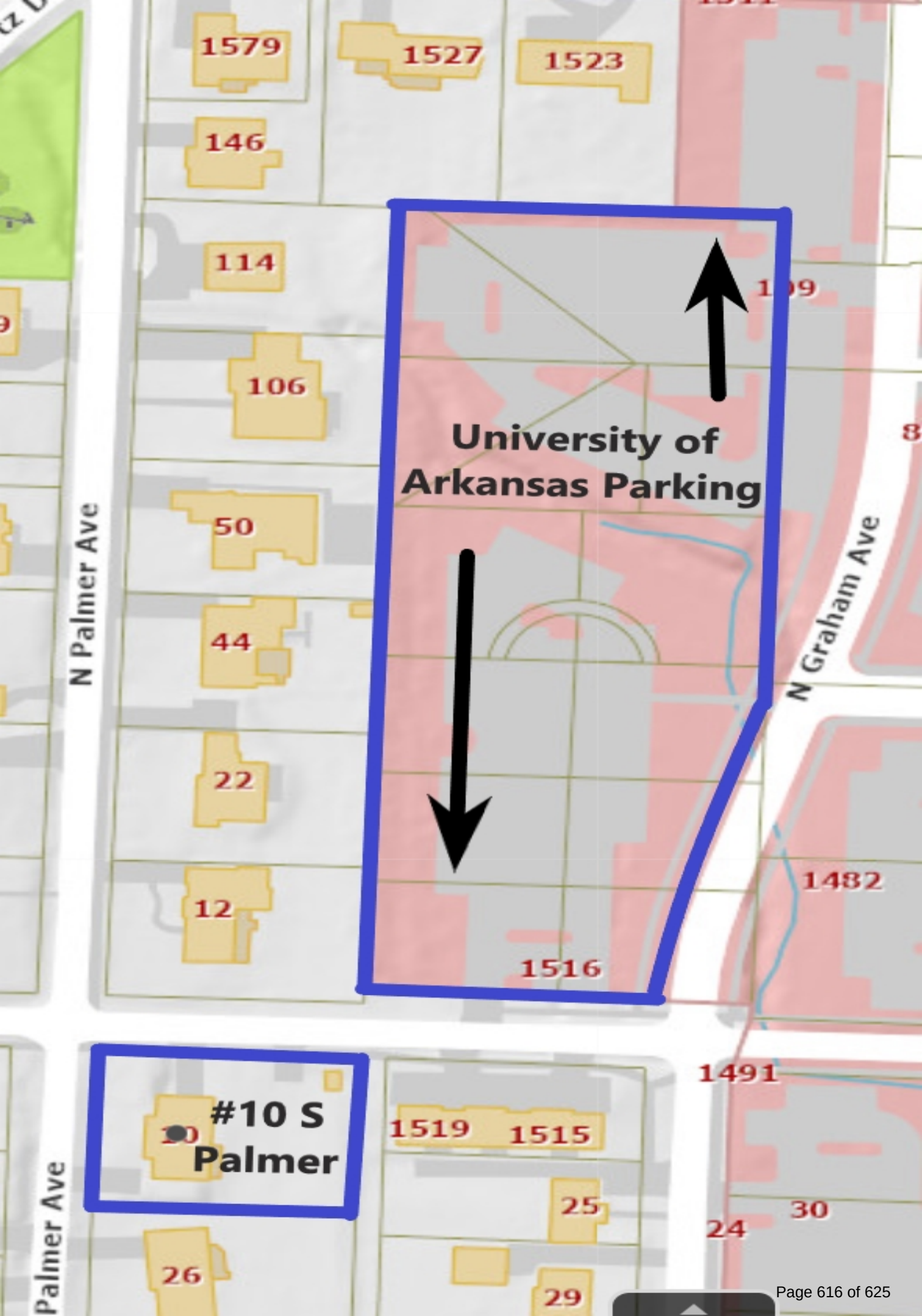


**101 Total
Parking Spots**



#10 S Palmer





**University of
Arkansas Parking**

**#10 S
Palmer**



#10 S Palmer

#10 S Palmer Ave

10

1519 1517 1515

25

26

29

**2.1 Acres
of
RSF-4**

**2.1 Acres
of
RMF-24**

48

95

125

129

143

147

151

RSF-4

RMF-24

1520

1500

1536

1492

S Graham Ave

S Graham Ave

S Palmer Ave

April 30, 2024

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Charles Cross

CTC Holdings

May 13, 2024

City of Fayetteville, Arkansas

Attn: Jessie Masters

Development Review Manager

Dear Ms. Masters,

I am the Pastor of Fellowship Fayetteville, located at 3447 AR- 112, Fayetteville, AR.

The International Christian Student Association has been serving the University of Arkansas and International college students since its founding, in 1982.

ISCA will be a great neighbor at 10 Palmer in Fayetteville, just as they have been at 89 Duncan Ave, and we urge the planning commission to grant approval of ISCA's request for Conditional Use Permit at its future home on Palmer.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Clark Nolen', with a long horizontal flourish extending to the right.

Clark Nolen

Fellowship Fayetteville

May 13, 2024

City of Fayetteville, Arkansas

Attn: Jessie Masters

Development Review Manager

Dear Ms. Masters,

I am the owner of 77 S. Duncan in Fayetteville and have owned the property since 1993. The International Student Christian Association has been a neighbor of mine for many years. I.S.C.A. and its residents have always been a great neighbor.

Please accept this letter of full endorsement of I.S.C.A. as a wonderful part of our community.

Sincerely,

John Adam

May 13, 2024

City of Fayetteville, Arkansas
Attn: Jessie Masters
Development Review Manager

Dear Jessie,

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Sincerely,

Lyndy Lindsey

Lindsey and Associates

May 10th, 2024

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9 May 2024

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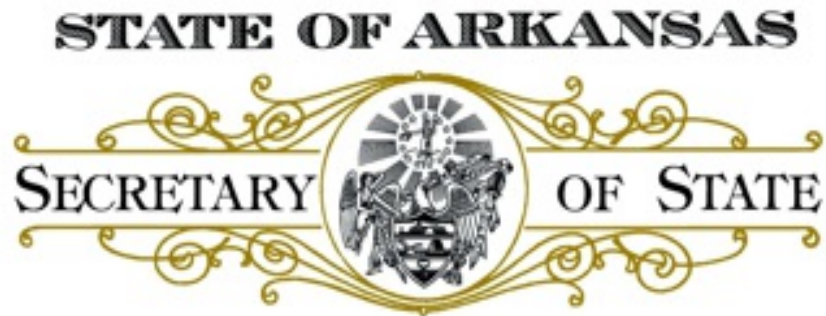
John and Jane Ray

35 South Hartman Ave

Fayetteville, AR 72701

rayfamily@sbcglobal.net

(479) 466-5937



John Thurston
ARKANSAS SECRETARY OF STATE

To All to Whom These Presents Shall Come, Greetings:

I, John Thurston, Arkansas Secretary of State of Arkansas, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of

Articles of Incorporation for Dom. Non-Profit Corp

of

**INTERNATIONAL STUDENT CHRISTIAN ASSOCIATION OF
NORTHWEST ARKANSAS**

filed in this office
June 10, 2024

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 10th day of June 2024.




John Thurston
Secretary of State

Online Certificate Authorization Code: 758950666cb68b9a45f
To verify the Authorization Code, visit sos.arkansas.gov