

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, AR 72701

(479) 575-8323



City Council Tentative Agenda

Tuesday, August 13, 2024

4:30 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

ZOOM INFORMATION:**1. WEBINAR ID: 892 1016 6967**

PUBLIC REGISTRATION LINK: [HTTPS://US06WEB.ZOOM.US/WEBINAR/REGISTER/WN_R93MHVOPSIUJ4E_RY4W3GQ](https://us06web.zoom.us/webinar/register/wn_r93mhvopsiuj4e_ry4w3gq)

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****A. CONSENT****A.1. APPROVAL OF THE AUGUST 6, 2024 CITY COUNCIL MEETING MINUTES****A.2. GARVER, LLC. (TASK ORDER 09):**

A RESOLUTION TO APPROVE TASK ORDER NO. 9 WITH GARVER, LLC. IN THE AMOUNT OF \$48,000.00 FOR DESIGN, BIDDING AND CONSTRUCTION PHASE SERVICES ASSOCIATED WITH THE HANGAR INFRASTRUCTURE IMPROVEMENTS PROJECT AT DRAKE FIELD, TO AUTHORIZE THE ACCEPTANCE OF A \$300,000.00 GRANT FROM THE ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND THE PROJECT, AND TO APPROVE A BUDGET ADJUSTMENT (2024-374)

A.3. OSPREY INITIATIVE, LLC. (SERVICE CONTRACT):

A RESOLUTION TO AWARD RFP 24-04 AND AUTHORIZE A ONE YEAR CONTRACT WITH OSPREY INITIATIVE, LLC. IN AN AMOUNT OF UP TO \$275,000 FOR WATERWAY CLEANUP SERVICES, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS (2024-391)

A.4. CENTRALSQUARE TECHNOLOGIES, LLC. (SOFTWARE AGREEMENT):

A RESOLUTION TO AUTHORIZE A ONE YEAR SOLUTIONS AND SUPPORT AGREEMENT WITH CENTRALSQUARE TECHNOLOGIES, LLC. IN THE AMOUNT OF \$27,595.33 TO PROVIDE SOFTWARE MAINTENANCE AND SUPPORT FOR THE CITY'S WORK ORDER AND ASSET MANAGEMENT SOFTWARE WITH AUTOMATIC RENEWALS SUBJECT TO A 5% PRICE

INCREASE EACH YEAR (2024-411)

A.5. RAFTELIS FINANCIAL CONSULTANTS, LLC. (SERVICE CONTRACT):

A RESOLUTION TO AUTHORIZE A CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS, LLC. PURSUANT TO RFP 24-08, IN THE AMOUNT OF \$111,858.00 FOR THE DEVELOPMENT OF A COMPREHENSIVE RATE STUDY FOR THE RECYCLING AND TRASH COLLECTION DIVISION, TO APPROVE A 10% PROJECT CONTINGENCY, AND TO APPROVE A BUDGET ADJUSTMENT (2024-416)

B. UNFINISHED BUSINESS

B.1. UNIFIED DEVELOPMENT CODE - CHAPTERS 166.02, 167.04 (AMENDMENT):

AN ORDINANCE TO AMEND § 166.02 DEVELOPMENT REVIEW PROCESS AND § 167.04 TREE PRESERVATION AND PROTECTION OF THE UNIFIED DEVELOPMENT CODE TO MODIFY DEVELOPMENT REQUIREMENTS ASSOCIATED WITH TREE PRESERVATION REQUIREMENTS (2024-328)

AT THE JULY 16, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS LEFT ON THE FIRST READING.

AT THE AUGUST 6, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS LEFT ON THE SECOND READING.

B.2. REZONING-2024-0026: (WEST OF 2910 N. OLD WIRE RD/LIVINGSTON SUBDIVISION, 254):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-26 FOR APPROXIMATELY 1.87 ACRES LOCATED WEST OF 2910 NORTH OLD WIRE ROAD IN WARD 3 FROM NC, NEIGHBORHOOD CONSERVATION TO RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE (2024-297)

AT THE JULY 16, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS LEFT ON THE FIRST READING.

AT THE AUGUST 6, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS LEFT ON THE SECOND READING.

B.3. REZONING-2024-0028: (EAST OF HARMON FIELD ON S. DUNCAN AVE./MODUS STUDIO, 522):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-28 FOR APPROXIMATELY 3.7 ACRES LOCATED EAST OF HARMON FIELD ON SOUTH DUNCAN AVENUE IN WARD 2 FROM RMF-

40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE TO MSC, MAIN STREET CENTER, SUBJECT TO A BILL OF ASSURANCE (2024-306)

AT THE JULY 16, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS AMENDED TO INCLUDE A REVISED BILL OF ASSURANCE AND LEFT ON THE FIRST READING.

AT THE AUGUST 6, 2024 CITY COUNCIL MEETING THIS ORDINANCE WAS LEFT ON THE SECOND READING.

C. NEW BUSINESS

C.1. SALES AND USE TAX BONDS (ISSUANCE AUTHORIZATION):

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED \$15,000,000 SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2024, FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CERTAIN STREET AND PARK FACILITIES AND IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO. (2024-365)

C.2. ADMINISTRATIVE-2024-0036: (AMEND UDC CHAPTERS 166.01, 166.02, 169.03):

AN ORDINANCE TO AMEND § 166.01 DEVELOPMENT CATEGORIES, § 166.02 DEVELOPMENT REVIEW PROCESS AND § 169.03 REVIEW AND/OR PERMITS REQUIRED; EXCEPTIONS OF THE FAYETTEVILLE CITY CODE TO ADDRESS DEVELOPMENT CLASSIFICATIONS, CONCEPT PLAN REQUIREMENTS, AND GRADING PERMIT REQUIREMENTS (2024-388)

C.3. VACATION-2024-0016: (1001 W. BULLDOG BLVD./FAYETTEVILLE PUBLIC SCHOOLS, 522):

AN ORDINANCE TO APPROVE THE VACATION OF 0.61 ACRES OF A TREE PRESERVATION EASEMENT LOCATED AT 1001 WEST BULLDOG BOULEVARD IN WARD 1 IN EXCHANGE FOR THE FAYETTEVILLE SCHOOL DISTRICT'S OFFER TO DEDICATE AN ADDITIONAL 2.25 ACRES OF TREE PRESERVATION EASEMENT (2024-417)

C.4. APPEAL: REZONING-2024-0030: (N. FUTRALL DR BETWEEN WEDINGTON

DR & MLK BLVD./WATSON, 480):

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-30 FOR APPROXIMATELY 6.62 ACRES LOCATED AT ON NORTH FUTRALL DRIVE BETWEEN WEDINGTON DRIVE AND MLK BOULEVARD IN WARD 4 FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE TO NS-G, NEIGHBORHOOD SERVICES - GENERAL (2024-385)

PROPOSED AGENDA ADDITIONS**D. CITY COUNCIL AGENDA SESSION PRESENTATIONS****D.1. WEST FORK OF THE WHITE RIVER STREAM AND PUMP STATION RESTORATION UPDATE - ALISON JUMPER & SANDI FORMICA****E. CITY COUNCIL TOUR****F. ANNOUNCEMENTS****G. ADJOURNMENT**



MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Jared Rabren, Airport Director
SUBJECT: **FYV Hangar Infrastructure Improvements – ADA Grant Acceptance, Garver Task Order 09 and Approval of a Budget Adjustment**

RECOMMENDATION:

Staff requests approval for the Aviation Division to execute a task order in the amount of \$48,000 for Garver, LLC to complete survey, design, bidding, and construction phase services for the proposed Hangar Infrastructure Improvements project at Fayetteville – Drake Field Airport.

Staff requests approval to accept a \$300,000 grant received from the Arkansas Department of Aeronautics (ADA) at their June 2024 Commission Meeting. Authorization to apply for this grant was received under City Council Resolution 138-24.

Staff requests approval for a budget adjustment in the amount of \$400,500.00 for the project, which includes \$300,000.00 of grant funds and \$100,500.00 of Aviation Division fund balance for matching grant costs and project contingency.

BACKGROUND:

Given the City's recent increase in hangar development, the City is in need of additional developable hangar space. This project will provide new water utility infrastructure to a new hangar development area located east of the existing T-Hangars on the east side of the airfield. The proposed water infrastructure will provide fire flows and potable water to support multiple clear span hangar developments. Existing apron pavement, sewer, and electrical infrastructure are already available in this area.

DISCUSSION:

Approval of Task Order 09 will authorize Garver to proceed with surveying, design, and bidding services. The project will advertise for bids in Spring 2025. Upon receipt of bids, the Aviation Division will seek approval to execute a construction contract with the lowest responsive and responsible bidder. A complete breakdown of the expected project funding is included below. All costs associated with this task order are included in the total project cost.

Engineering Services:	\$48,000.00	ADA:	\$300,000.00
Construction (Estimated):	\$327,000.00		
<u>Contingency (Estimated):</u>	<u>\$37,500.00</u>	<u>City:</u>	<u>\$112,500.00</u>
TOTAL:	\$412,500.00	TOTAL:	\$412,500.00

BUDGET/STAFF IMPACT:

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

The Aviation Division may, on a temporary basis, cash-flow up to \$412,500.00 of its fund balance reserve. This amount includes \$300,000.00 for cash-flow to cover the ADA's grant amount until reimbursement at the end of the project, \$75,000.00 to match the ADA grant received, plus a 10% project contingency of the approved project budget, or \$37,500.00.

ATTACHMENTS: SRF (#3), BA (#4), Task Order 09 - Hangar Infrastructure Improvements (#5)



City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-374

FYV Hangar Infrastructure Improvements – ADA Grant Acceptance, Garver Task Order 09 and Approval of a Budget Adjustment

A RESOLUTION TO APPROVE TASK ORDER NO. 9 WITH GARVER, LLC. IN THE AMOUNT OF \$48,000.00 FOR DESIGN, BIDDING AND CONSTRUCTION PHASE SERVICES ASSOCIATED WITH THE HANGAR INFRASTRUCTURE IMPROVEMENTS PROJECT AT DRAKE FIELD, TO AUTHORIZE THE ACCEPTANCE OF A \$300,000.00 GRANT FROM THE ARKANSAS DEPARTMENT OF AERONAUTICS TO FUND THE PROJECT, AND TO APPROVE A BUDGET ADJUSTMENT

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign Task Order No. 9 with Garver, LLC in the amount of \$48,000.00 for design, bidding and construction phase services associated with the Hangar Infrastructure Improvements Project at Drake Field.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes acceptance of the Fiscal Year 2024 Arkansas Department of Aeronautics grant in the amount of \$300,000.00 to fund the project.

Section 3: 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

2024-374

Item ID

8/20/2024

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

Jared Rabren

7/17/2024

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

The Aviation Division requests approval to execute a task order in the amount of \$48,000 for Garver, LLC to complete survey, design, bidding, and construction phase services for the proposed Hangar Infrastructure Improvements project at Drake Field, to accept a \$300,000 grant received from the Arkansas Department of Aeronautics (ADA) and approval for a budget adjustment in the amount of \$400,500.00.

Budget Impact:

5550.760.3960-5860.02

Airport

Account Number

Fund

24014.1

Airport East Side Hangar

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 12,000.00

Expenses (Actual+Encum)

\$ -

Available Budget

\$ 12,000.00

Does item have a direct cost? Yes

Item Cost

\$ 48,000.00

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ 400,500.00

Remaining Budget

\$ 364,500.00

V20221130

Purchase Order Number:

Previous Ordinance or Resolution # 138-24

Change Order Number:

Approval Date: 5/21/2024

Original Contract Number:

Comments:

Budget Year	Division	AIRPORT SERVICES (760)	Adjustment Number
2024	/Org2		
	Requestor:	Dee McCoy	

Staff requests approval for the Aviation Division to execute a task order in the amount of \$48,000 for Garver, LLC to complete survey, design, bidding, and construction phase services for the proposed Hangar Infrastructure Improvements project at Fayetteville – Drake Field Airport. Staff also requests approval to accept a \$300,000 grant received from the Arkansas Department of Aeronautics (ADA) at their June 2024 Commission Meeting. Authorization to apply for this grant was received under City Council Resolution 138-24. Approval of a Budget Adjustment.

	COUNCIL DATE:	8/20/2024
	ITEM ID#:	2024-374
	Holly Black	
	7/30/2024 7:55 AM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]

APPENDIX A-09

TASK ORDER 09 FAYETTEVILLE – DRAKE FIELD AIRPORT HANGAR INFRASTRUCTURE IMPROVEMENTS

This TASK ORDER is made as of _____, 2024 by and between the CITY OF FAYETTEVILLE of Fayetteville, Arkansas hereinafter referred to as “CITY OF FAYETTEVILLE,” and GARVER, LLC, hereinafter referred to as “GARVER”, in accordance with the provisions of the AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES executed on November 17, 2020.

Under this Task Order, the CITY OF FAYETTEVILLE intends to make the following improvements for the FYV Hangar Infrastructure Improvements project.

Improvements will consist primarily of a water line extension to serve a future hangar development area located along the east side of the existing T-Hangar apron as shown in Exhibit C-09.

GARVER will provide professional services related to these improvements as described herein.

SECTION 1 - SCOPE OF SERVICES

GARVER will provide services as detailed in Exhibit A-09.

SECTION 2 – PAYMENT

For the work described under SECTION 1 - SCOPE OF SERVICES, the CITY OF FAYETTEVILLE will pay GARVER on a lump sum basis and cost-plus basis.

The table below presents a summary of the fee amounts and fee types for this contract.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Surveying Services	\$10,400.00	Lump Sum
Bid Package Development	\$19,150.00	Lump Sum
Bidding Services	\$3,100.00	Lump Sum
Construction Phase Services	\$15,350.00	Cost + FF
TOTAL FEE	\$48,000.00	

Bid Package Development and Bidding Services:

The CITY OF FAYETTEVILLE will pay GARVER the lump sum amount not to exceed \$32,650.00. For informational purposes, a breakdown of GARVER’s estimated costs is included in Exhibit B-09 with approximate current hourly rates for each employee classification.

Construction Phase Services:

The CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the unburdened hourly payroll rate of each of GARVER’s personnel during the performance of these services for work time directly connected with the project, plus payroll and general overhead costs of 191.01% of the unburdened

hourly rate, plus direct reimbursable expenses normal and necessary for the completion of the project, plus a fixed fee of \$1,927.87. Estimated cost of these services, including the fixed fee is \$15,350.00. The actual total fee may not exceed this estimate without prior approval from the CITY OF FAYETTEVILLE. For informational purposes, a breakdown of GARVER's estimated costs is included in Exhibit B-09 with approximate current hourly rates for each employee classification. Underruns in any phase may be used to offset overruns in another phase as long as the overall contract amount is not exceeded.

Expenses other than salary costs that are directly attributable to performance of our professional services will be billed as follows:

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
3. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.

Additional Services (Extra Work). For work not described or included in Section 1 – Scope of Services but requested by the CITY OF FAYETTEVILLE in writing, the CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the rates shown in Exhibit B-09 for each classification of GARVER's personnel, plus overhead, plus 15% profit, plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel.

SECTION 3 – EXHIBITS

3.1 The following Exhibits are attached to and made a part of this Agreement:

- 3.1.1 Exhibit A-09 Scope of Services
- 3.1.2 Exhibit B-09 Manhour Tables
- 3.1.3 Exhibit C-09 Project Exhibit

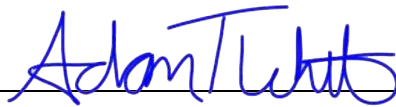
This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Approval and acceptance of this Task Order, including attachments listed in SECTION 3 – EXHIBITS, shall incorporate this document as part of the Agreement. Garver is authorized to begin performance upon receipt of a copy of this Task Order signed by the CITY OF FAYETTEVILLE. The effective date of this Task Order shall be the last date written below.

CITY OF FAYETTEVILLE, ARKANSAS

GARVER

By : _____
Mayor, Lioneld Jordan

By:  _____

ATTEST:

By: _____
City Clerk

Title: _____ Vice President



EXHIBIT A-09 (SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services for utility infrastructure improvements at Fayetteville – Drake Field Airport. Improvements will consist primarily of a water line extension to serve a future hangar development area located along the east side of the existing T-Hangar apron as shown in Exhibit C. The Scope of Services includes the following professional engineering and surveying services.

- Surveying Services
- Bid Package Development
- Bidding Services
- Construction Phase Services

1. SURVEYING SERVICES

- 1.1. Design Surveys. Garver will provide field survey data from field work for designing the project, and this survey will be tied to the Owner's control network.
- 1.2. Garver will conduct field surveys, utilizing radial topography methods, at intervals and for distances at and/or along the project site as appropriate for modeling the existing ground, including locations of pertinent features or improvements. Buildings and other structures, airfield pavements, streets, drainage features, airfield lights and signs, fences, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site, will be located. Control points will be established for use during construction. All surveys shall be conducted during normal working hours.
- 1.3. Garver will assemble data obtained during the performance of the field surveys in an AutoCAD Civil3D base map drawing to be utilized for design of the project.
- 1.4. Easement Development. Garver will develop easement documents for the following utilities:
 - Water
- 1.5. Garver will coordinate easement size requirements with the franchise utilities above for easement preparation. Garver will research property records and develop a legal description for the proposed easement. If necessary, Garver will also develop an exhibit showing the easement boundary. Easement form will be provided by the Owner or franchise utility.

2. BID PACKAGE DEVELOPMENT

- 2.1. General: Garver will prepare detailed construction drawings, specifications, instructions to bidders, and general provisions and special provisions, all based on guides furnished to Garver by the Owner and FAA, or internally developed by Garver. Contract Documents (Plans, Specifications, and Estimates) will be prepared for award of one (1) construction contract. These designs shall conform to the standards of practice ordinarily used by members of Garver's profession practicing under similar conditions and shall be submitted to the State Agency office from which approval must be obtained.



- 2.2. Owner / Agency Coordination: Garver's project manager and/or design team will coordinate with the Owner as necessary to coordinate design decisions, site visits, document procurement, or other design needs.
- 2.3. Project Management Plan / Quality Control Procedures
- 5.3.1 Garver will develop a project specific project management plan. The project management plan will include the project background, scope of work, stakeholder contact information, project team organization and roles, design criteria, project schedule, deliverables, and quality control procedures.
- 5.3.2 Garver will complete quality control reviews for each deliverable prior to any design submission to Owner and/or FAA. Quality control reviews will be completed by a senior project manager. Weekly internal progress meetings will be held during all design phases to ensure adequate quality control throughout the design phases.
- 2.4. Construction Safety and Phasing Plan
- 2.4.1. Garver will develop a construction safety and phasing plan (CSPP) for the project. During development of the CSPP, Garver will hold a meeting with Airport staff at the Airport's request to obtain feedback regarding operations during each proposed phase of construction.
- 2.5. Existing Conditions Review
- 2.5.1. Record Document Review: Garver will review record document data from the vicinity of the construction site to evaluate existing conditions. Record document data may include record drawings, record surveys, utility maps, GIS data, and previous design reports.
- 2.5.2. Site Visits: Garver's civil engineers will perform up to one (1) site visit to the project site to review existing conditions and evaluate survey and record document data.
- 2.6. Utility Design and Coordination: It is expected that the public water main will require extension as part of the project. Garver will coordinate with the Owner and applicable utility owners for utility extension design. In addition, Garver will also design infrastructure for future extension of the water main. All utility design will be subject to review / approval by the Arkansas Department of Health (ADH).



2.7. Plan Set Development

The following matrix details the plan drawings to be included in each design submittal.

Plan Set	Design Phase	
	90% Preliminary	100% Issued for Bid
Cover Sheet	X	X
General Notes	X	X
Project Layout & Survey Control Plan	X	X
Construction Safety Plans	X	X
Construction Safety Details	X	X
Erosion Control Plans	X	X
Erosion Control Details	X	X
Utility Plans	X	X
Utility Details	X	X

2.8. Specifications and Contract Documents

2.8.1. Technical Specifications: Detailed specifications shall be developed using City of Fayetteville Utility Department Standard Specifications for Design and Construction of Water Lines and Sewer Lines (2017 Edition). Additional supplementary specifications will be developed for project requirements not covered by FAA AC150/5370-10.

2.8.2. Construction Contract Documents: Garver will develop construction contract documents based on EJCDC standards. Final construction contract documents will be submitted to the Owner for final review and approval.

2.9. Quantities and Engineer's Opinion of Probable Cost: Garver will develop detailed quantities in PDF format for use in construction cost estimating for each design phase. Quantities will be completed by pay item. Upon the completion of quantity development, Garver will review previous cost data and market conditions and complete an Engineer's Opinion of Probable Cost.

2.10. Design Services Submission and Meeting Summary: The following design submittal phases shall be included in the fee summary. A summary of each design phase and the associated review meetings is included below.

2.10.1. 90% Preliminary Design

2.10.1.1. Garver will develop 90% preliminary design plans and specifications and submit these to the Owner and the City of Fayetteville Utilities Department for review. It is anticipated that the Owner will review the design submission within two (2) weeks.

2.10.1.2. At the completion of the Owner and City of Fayetteville Utilities Department review period, Garver will meet with the Owner to review the 90% preliminary design plans and specifications, and to receive Owner comments and direction.



2.10.1.3. Any comments received by the City of Fayetteville Utility Department will be addressed and resubmitted for additional review.

2.10.1.4. Upon approval from City of Fayetteville Utility Department, Garver will submit plans and specifications to Arkansas Department of Health (ADH). Any comments received from ADH will be addressed and resubmitted for additional review.

2.10.2. 100% Issued for Bid (IFB): Garver will develop 100% IFB plans and submit these to the Owner for review.

3. BIDDING SERVICES

3.1. Bidding. Garver will assist the Owner in advertising for and obtaining bids or negotiating proposals for one prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and attend a pre-bid conference. The Owner will pay advertising costs outside of this contract.

3.2. Garver will issue addenda as appropriate to interpret, clarify or expand the Bidding Documents. Garver will consult with and advise the Owner as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents. Garver will consult with the Owner concerning the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

3.3. Garver will attend the bid opening, prepare a bid tabulation, and assist the Owner in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment, and services. Garver will assist the Owner in the execution of all contract documents and furnish a sufficient number of executed documents for the Owner and Contractor.

4. CONSTRUCTION PHASE SERVICES

4.1. During the construction phase of work, Garver will accomplish the tasks below.

4.2. Issued for Construction (IFC) Documents

4.2.1. Garver will compile bid addendums and any other necessary plan changes due to post-bid project updates and/or funding changes into a final Issued for Construction (IFC) set of plans and specifications.

4.3. Submittals

4.3.1. Garver will evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction,



coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

4.4. Notice to Proceed & Preconstruction Meeting

4.4.1. Garver will issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting. Garver will provide meeting minutes for submission to all parties at the conclusion of the meeting. Garver will prepare for and attend any utility pre-construction meetings as required.

4.5. Progress Meetings

4.5.1. As a minimum, Garver's Project Manager or Project Engineer will attend weekly progress meetings with the Owner and Contractor. It is expected that 4 meetings will be held via conference call. Garver's project engineer or his qualified representative will be available at all times work is in progress for telephone contact by the RPR. Garver's project engineer shall direct, supervise, advise, and counsel the Resident Project Representative and construction observation personnel in the accomplishment of Garver's duties. Garver will prepare for and attend any utility pre-construction meetings as required.

4.6. Owner Coordination

4.6.1. Garver will consult with and advise the Owner during the construction period. Garver will submit, when requested by the Owner, written reports to the Owner on the progress of the construction including any problem areas that have developed or are anticipated to develop.

4.7. RFIs

4.7.1. Garver will issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.

4.8. Progress Payments

4.8.1. Garver will prepare Contractor's progress payment requests based on the actual quantities of contract items completed and accepted and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.



4.9. Record Drawings

- 4.9.1. Garver will maintain a set of working drawings and provide information for preparation of record drawings of the completed project. This information will be incorporated into final record drawings completed as part of Grant Closeout Services and final record drawings will be provided to the Owner after project completion. Garver shall prepare a set of utility record drawings and prepare and furnish record drawings to local utilities as required.

4.10. Change Orders

- 4.10.1. When authorized by the Owner, Garver will prepare change orders or supplemental agreements for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.

4.11. Final Inspection

- 4.11.1. Garver will participate in a pre-final walkthrough with the Owner. Garver will also participate in a final project inspection with the Owner and Contractor, prepare a punch list, review final project closeout documents, and submit the final pay request.

4.12. On-Site Resident Project Representative Services

- 4.12.1. Garver will provide part-time Resident Project Representative (RPR) services for the 30-calendar-day construction contract performance time. The proposed fee is based on approximately 8 hours per week during the construction contract performance time for the RPR, plus an additional one (1) weeks for weather and other delays beyond the Contractor's control. If the construction time extends beyond the time established in this agreement or if the Owner wishes to increase the time or frequency of the observation, the Owner will pay Garver an additional fee agreed to by the Owner and Garver. All RPR personnel shall have the appropriate experience and qualifications.

- 4.12.2. During the construction period, Garver's RPR will provide or accomplish the following:

- Consult with and advise the Owner during the construction period. Garver will submit, when requested by the Owner, written reports to the Owner on the progress of the construction including any problem areas that have developed or are anticipated to develop.
- As necessary, conduct safety meetings with the Contractor.
- Perform intermediate inspections in advance of the final inspection.
- Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
- Maintain a project diary which will contain information pertinent to each site visit.
- Monitor the contractor's conformance to the approved construction safety and phasing plan.

- 4.12.3. In performing construction observation services, Garver will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Garver does not guarantee the performance of the Contractor(s), nor is Garver responsible for the actual supervision of construction operations. Garver does not guarantee the performance of the contracts by the Contractors nor assume any duty to supervise safety



procedures followed by any Contractor or subcontractor or their respective employees or by any other person at the job site. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

4.13. Grant Closeout Services

4.13.1. At the conclusion of construction, Garver will assist the Owner in submission of state grant closeout document for the project.

5. PROJECT DELIVERABLES

5.1. The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.

- 90% Preliminary Design Plans and Specifications to the Owner and affected Utilities.
- 100% Issued for Bid Plans and Specifications to the Owner.
- Issued for Construction Plans and Specifications to the Owner and Contractor.
 - Three hard copies to the Contractor
- Reviewed submittals to the Contractor.
- Record Plans to the Owner.
 - One hard copy to the Owner.
- Other electronic files as requested.

6. ADDITIONAL SERVICES

6.1. The following items are not included under this agreement but will be considered as additional services to be added under Amendment if requested by the Owner.

- Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- Deliverables beyond those listed herein.
- Design of any utility relocation other than that included herein.
- Engineering, architectural, or other professional services beyond those listed herein.
- Retaining walls or other significant structural design.
- Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
- Services after construction, such as warranty follow-up, operations support, and Part 139 inspection support.
- Materials testing services.

7. SCHEDULE

7.1. Garver shall begin work under this Agreement upon execution of this Agreement and shall complete the work within a mutually agreeable schedule with the Owner.

Exhibit B-09

City of Fayetteville FYV Hangar Infrastructure Improvements

Surveying Services

WORK TASK DESCRIPTION	E-4	E-3	E-2	E-1	S-5	S-4	2-Man Crew (Survey)
	hr	hr	hr	hr	hr	hr	hr
1. Administration							
Develop Survey Field Work Exhibits		1					
Coordinate with Survey Crew					2		
Subtotal - Administration	0	1	0	0	2	0	0
2. Surveys - Topographic							
Review of Existing Control Points						2	
Topographic Surveys							10
Data Processing/DTM Preparation						4	
Develop Survey Basemap and Existing Surface						2	
Survey Meshing with Base Maps						1	
QC Review of Survey Data		1			2		
Subtotal - Surveys - Topographic	0	1	0	0	2	9	10
3. New Task Group							
Review Property Layout Map						1	
Delineate Property Lines and Easement Lines					1	1	
Survey Property Lines							8
Easement Acquisition Documents					3	6	
Subtotal - New Task Group	0	0	0	0	4	8	8

Hours	0	2	0	0	8	17	18
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SUBTOTAL - SALARIES: **\$3,051.70**

LABOR AND GENERAL

ADMINISTRATIVE OVERHEAD: **\$5,829.05**

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$37.14
Survey Supplies	\$50.00
Travel Costs (3 trips at 50mi/trip)	\$100.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: **\$187.14**

SUBTOTAL: **\$9,067.89**

SUBCONSULTANTS FEE: **\$0.00**

PROFESSIONAL FEE **\$1,332.11**

TOTAL FEE: **\$10,400.00**

Exhibit B-09

**City of Fayetteville
FYV Hangar Infrastructure Improvements**

Bid Package Development

WORK TASK DESCRIPTION	E-4	E-3	E-2	E-1	T-2	T-1	AM-1
	hr	hr	hr	hr	hr	hr	hr
1. Project Administration							
Coordination with Client		4		2			
Coordination with (State Agency)		1		2			
Coordination with City		2		4			
Internal (Bi-Weekly) Progress Meetings (4)		4		4			
Site Visit (1 person, 1 trip)		2					
Prepare for Preliminary Plan Review Meeting				1			
Attend Preliminary Plan Review Meeting (2 People, on-site)		2		2			
Prepare and Distribute Preliminary Review Meeting Minutes and Tasks				1			
Subtotal - Project Administration	0	15	0	16	0	0	0
2. Civil Engineering							
Base Map Setup				2			
Develop Preliminary Construction Safety and Phasing Plan				4			
Preliminary Plans							
Cover Sheet						2	
Project Layout and Survey Control Plan		1		4			
Construction Safety Plans		1		2			
Construction Safety Details		1		1			
Erosion Control Plans		1		4			
Erosion Control Details		1		1			
Utility Plans		4		10			
Utility Details		1		4			
Develop Preliminary Construction Contract Documents		1		2			
Develop Preliminary Supplemental Specifications		1		2			
Develop Preliminary Quantities		1		2			
Develop Preliminary Opinions of Probable Construction Costs		1		2			
Internal Quality Control (QC) Review		8					
Incorporate QC Review Comments				8			
Incorporate Preliminary Owner/Utility Review Comments		1		4			
Subtotal - Civil Engineering	0	23	0	52	0	2	0

Hours 0 38 0 68 0 2 0

SUBTOTAL - SALARIES: \$5,663.84

LABOR AND GENERAL

ADMINISTRATIVE OVERHEAD: \$10,818.50

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly \$75.31
Postage/Freight/Courier \$50.00
Travel Costs (2 trips at 50 mi/trip) \$70.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$195.31

SUBTOTAL: \$16,677.65

SUBCONSULTANTS FEE: \$0.00

PROFESSIONAL FEE \$2,472.35

TOTAL FEE: \$19,150.00

Exhibit B-09**City of Fayetteville
FYV Hangar Infrastructure Improvements****Bidding Services**

WORK TASK DESCRIPTION	E-4	E-3	E-2	E-1	T-2	T-1	AM-1
	hr	hr	hr	hr	hr	hr	hr
1. Civil Engineering							
Dispense Plans and Specs to Prospective Bidders				1			
Review and Respond to Request for Information (RFI)		1		2			
Draft and Distribute Addendums				4			
Bid Opening (1 person, on-site)		2					
Prepare Bid Tabulation				2			
Evaluate Bids and Prepare Recommendation of Award		1		1			
Prepare Contract Documents		1		2			
Subtotal - Civil Engineering	0	5	0	12	0	0	0

Hours	0	5	0	12	0	0	0
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SUBTOTAL - SALARIES:	\$880.04
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LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:	\$1,680.96
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DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$69.84
Postage/Freight/Courier	\$50.00
Travel Costs (1 trip at 50mi/trip)	\$35.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$154.84
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SUBTOTAL:	\$2,715.84
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SUBCONSULTANTS FEE:	\$0.00
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PROFESSIONAL FEE	\$384.15
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TOTAL FEE:	\$3,100.00
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Exhibit B-09**City of Fayetteville
FYV Hangar Infrastructure Improvements****Construction Phase Services**

WORK TASK DESCRIPTION	E-4	E-3	E-2	E-1	C-2	C-1	2-Man Crew (Survey)
	hr	hr	hr	hr	hr	hr	hr
1. Civil Engineering							
Prepare IFC Plans and Specs and submit to Contractor				2			
Prepare and Distribute Notice To Proceed				1			
Prepare for Preconstruction Meeting				1			
Attend Preconstruction Meeting (3 people, on-site)		2		2		2	
Prepare and Distribute Preconstruction meeting minutes				1			
Prepare Contractor Pay Application (2 applications)				2			
Coordination with Inspector (2 hr/week)		2		6			
Develop Submittal Log				2			
Prepare for and Attend (Virtual) Progress Meetings (3 people, 4 meetings weekly)		4		4		4	
Shop Drawings/Submittal Review & Responses				2			
Final Inspection and Punchlist		2		2		2	
Punchlist Coordination						1	
Final Walkthrough				2		2	
Develop and Distribute Record Documents				4			
Review IFC Plans and Specifications						8	
Resident Project Representative Services (4 weeks @ 8 hr/Week)						32	
Grant Closeout Services		1		4			
Subtotal - Civil Engineering	0	11	0	35	0	51	0

Hours	0	11	0	35	0	51	0
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SUBTOTAL - SALARIES:	\$4,416.51
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LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:	\$8,435.98
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DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$44.64
Postage/Freight/Courier	\$25.00
Travel Costs (15 trips at 50mi/trip)	\$500.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES:	\$569.64
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SUBTOTAL:	\$13,422.13
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SUBCONSULTANTS FEE:	\$0.00
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PROFESSIONAL FEE	\$1,927.87
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TOTAL FEE:	\$15,350.00
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MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director
Terry Gulley, Asst Public Works Director - Ops

FROM: Byron Humphry, Parks Maintenance Superintendent

SUBJECT: **Awarding RFP 24-04, Waterway Cleanup Services to Osprey Initiative LLC**

RECOMMENDATION:

A resolution to award RFP 24-04, Waterway Cleanup Services to Osprey Initiative LLC, approving a one-year contract with four one-year automatic renewals to be used within approved budget based on pricing presented in the response submittal.

BACKGROUND:

Many of the waterways and streams within the City of Fayetteville have been impacted by litter. Streams adjacent to unsanctioned camps are especially impacted, but litter from other sources also accumulates in the waterways. These waterways need to be cleaned and the source of the litter needs to be identified to assist in the development of prevention strategies. RFP 24-04 was advertised on March 14, 2024, for Waterway Cleanup Services for ten waterways that are heavily impacted by litter. One proposal was received, and a selection committee met on May 15, 2024 and awarded the bid to Osprey Initiative LLC.

DISCUSSION:

The proposal was structured with an intent to provide initial cleanup services (tactical cleanups) and data reporting at each of the 10 waterways and subsequent annual cleanups afterwards for the 4 remaining years of the contract. The total contract cost of the 5-year proposal is \$786,560. The breakdown of cost per task and year is as follows:

Task	Year 1	Year 2	Year 3	Year 4	Year 5
Tactical Cleanups	\$ 190,860	\$ 139,300	\$ 113,000	\$ 113,000	\$ 113,000
Device Location Rec	\$ 13,200				
Device Delivery	\$ 19,000				
Reporting	\$ 19,920	\$ 15,120	\$ 15,120	\$ 15,120	\$ 19,920
subtotal	\$ 242,980	\$ 154,420	\$ 128,120	\$ 128,120	\$ 132,920

In addition to this base proposal, the response also includes a 12-month maintenance agreement per litter capture device. The exact number of capture devices installed will depend on the recommendations of the consultant and the available budget. The rate of the maintenance agreement is as follows:

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

Device Type	Monthly Rate	Annual Rate
Litter Boom	\$ 2,100	\$ 25,200
Litter Gitter	\$ 2,500	\$ 30,000

BUDGET/STAFF IMPACT:

This contract is funded from Sales Tax CIP Funds. This project is budgeted at \$300,000 per year. This project is split between unsanctioned camp cleanup and waterway cleanup. This proposal allocates \$275,000 per year for waterway cleanup for 5 years, pending City Council approval of the annual and CIP budget. After the annual tactical cleanups and reporting in the base proposal are performed, the remaining balance in the project allocated to the waterway cleanup will be utilized as needed for the maintenance agreement to service the litter capture devices. The breakdown of funds is as follows:

Purchase Order Detail						
	Fund	Account	Project	Contract Amount	Remaining Balance (12 -Month Maintenance Agreement)	Annual Total
Year 1 - 2024	Sales Tax	4470.521.8520-5315.00	24012.1000	\$ 242,980	\$ 32,020	\$ 275,000
Year 2 - 2025	Sales Tax	4470.521.8520-5315.00	24012.1000	\$ 154,420	\$ 120,580	\$ 275,000
Year 3 - 2026	Sales Tax	4470.521.8520-5315.00	24012.1000	\$ 128,120	\$ 146,880	\$ 275,000
Year 4 - 2027	Sales Tax	4470.521.8520-5315.00	24012.1000	\$ 128,120	\$ 146,880	\$ 275,000
Year 5 - 2028	Sales Tax	4470.521.8520-5315.00	24012.1000	\$ 132,920	\$ 142,080	\$ 275,000

ATTACHMENTS: SRF (#3), RFP 24-04 Contract - Osprey Initiative LLC - Signed (#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 #: 2024-391

Awarding RFP 24-04, Waterway Cleanup Services to Osprey Initiative LLC

A RESOLUTION TO AWARD RFP 24-04 AND AUTHORIZE A ONE YEAR CONTRACT WITH OSPREY INITIATIVE, LLC. IN AN AMOUNT OF UP TO \$275,000 FOR WATERWAY CLEANUP SERVICES, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS

WHEREAS, many of the waterways and streams within the City have been impacted by litter; and

WHEREAS, these waterways need to be cleaned and the source of the litter needs to be identified to assist in the development of prevention strategies.

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 awards RFP 24-04 and authorizes a one-year contract with Osprey Initiative LLC in an amount of up to \$275,000.00 for waterway cleanup services, with automatic renewals for up to four additional one-year terms.

City of Fayetteville Staff Review Form

2024-391

Item ID

8/20/2024

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

Byron Humphry

7/29/2024

PARKS OPERATIONS (521)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to award RFP 24-04, Waterway Cleanup Services to Osprey Initiative LLC, approving a one-year contract with four one-year automatic renewals to be used within approved budget based on pricing presented in the response submittal.

Budget Impact:

4470.521.8520-5315.00

Sales Tax CIP

Account Number

Fund

24012.1000

Trash Removal/Waterway Cleanup Services

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 300,000.00

Expenses (Actual+Encum)

\$ 18,361.71

Available Budget

\$ 281,638.29

Does item have a direct cost? Yes

Item Cost

\$ 275,000.00

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 6,638.29

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



This contract executed this _____ day of _____, 2024, between the City of Fayetteville, Arkansas (CITY), of 113 W. Mountain, Fayetteville, AR 72701 and Osprey Initiative LLC (OSPNEY) of 651 Olive Ave., Fairhope, AL 36532, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Purpose: The purpose of this Contract is to provide the terms and conditions necessary for the Waterway Cleanup Services for the City of Fayetteville (the "Project"), as defined in the scope of work of RFP 24-04, Waterway Cleanup Services.
2. Contract Documents: The Contract documents which comprise the contract between the City of Fayetteville and OSPNEY consist of this Contract and the following documents attached hereto, and made a part hereof:
 - a. Appendix A: Scope of Work & Fees
 - b. Appendix B: CITY Issued Solicitation for RFP 24-04, Waterway Cleanup Services
 - c. Appendix C: OSPNEY's RFP Submittal
 - d. Appendix D: OSPNEY's Certificate of Insurance
3. City's Responsibilities:
 - a. The City shall make available to OSPNEY, all relevant information or data it has pertinent to the Project which is required by OSPNEY to perform the Services. OSPNEY shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the City, including information and data originating with other consultants employed by the City whether such consultants are engaged at the request of OSPNEY or otherwise.
 - b. When requested by OSPNEY, the City may engage specialist consultants directly to perform items of work necessary to enable OSPNEY to carry out the Services. Whether arranged by the City or OSPNEY, these services shall be deemed to be provided under direct contracts to the City unless expressly provided otherwise. If the City chooses not to engage specialist consultants, then the Parties will work cooperatively to modify the scope of services to reflect any reductions or additions to the services to be provided by OSPNEY.
 - c. The City shall give prompt consideration to all documentation related to the Project prepared by OSPNEY and whenever prompt action is necessary shall inform OSPNEY of City's decisions in such reasonable time so as not to delay the schedule for providing the Services.
 - d. The City of Fayetteville's Park Operations Director is the project representative with respect to

the services to be performed under this Agreement. The Park Operations Director shall have complete authority to transmit instructions, receive information, interpret and define policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

4. OSPREY's Responsibilities:

- a. **OSPREY** shall furnish the necessary qualified personnel to provide the Services. **OSPREY** represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, **OSPREY** will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure **OSPREY's** performance. There are no other representations or warranties expressed or implied made by **OSPREY**.

5. Non-Assignment: **OSPREY** shall not assign its duties under the terms of this agreement without prior written consent of the City.

6. Indemnification and Hold Harmless:

- a. **OSPREY** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, but not defend, against any and all claims for property damage, personal injury or death, arising from **OSPREY's** performance under this contract. This clause shall not, in any form or manner, be construed to waive that tort immunity set forth under Arkansas Law.
- b. Notwithstanding anything to the contrary, the total amount of all claims the City of Fayetteville may have against **OSPREY** under this contract or arising from the performance or non-performance of the services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall not exceed \$500,000. As the City of Fayetteville's sole and exclusive remedy under this contract any claim, demand or suit shall be directed and/or asserted only against **OSPREY** and not against any of **OSPREY's** employees, officers or directors. Neither the City of Fayetteville nor **OSPREY** shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this contract or the performance of the services on this project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

7. Insurance:

- a. OSPREY shall furnish a certificate of insurance addressed to the City of Fayetteville within ten (10) calendar days after contract finalization, presenting insurance which shall be maintained throughout the term of the Contract in compliance with the terms of RFP 24-04. If applicable, OSPREY shall require any subcontractor to provide insurance. In the event any employee engaged in work on the project under this contract is not protected under Worker's Compensation insurance, OSPREY shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of their employees are not otherwise protected. Worker's Compensation coverage shall be applicable with state law.
 - i. Osprey shall carry the following coverages, at minimum:
 1. Worker's Compensation Insurance – Statutory Amount
 2. Automotive Insurance covering all vehicles and trailers, if applicable
 3. General Liability - \$1,000,000 each occurrence, \$3,000,000 aggregate
 - ii. Certificates of Insurance shall list the City of Fayetteville as an additional insured. Listing the CITY as a Certificate Holder only is NOT an acceptable substitute. Certificates of Insurance must include the endorsement(s) showing the City of Fayetteville listed as an additional insured.

8. Price:

- a. OSPREY shall perform the services included in this proposal, over the length of 5 years, for a fee of \$ 786,560.00.
- b. Fee breakdown for services and purchases shall be used as identified in Appendix A.
 - i. Additional services requested that fall outside the scope of this project shall be provided on a time-and-materials basis, subject to pre-approval.

9. Payments:

- a. Payments shall be made after approval and acceptance of each itemized invoice, which shall not be unreasonably withheld.
- b. Unless disputed by the City, payments shall be made **30 calendar days after acceptance of invoice**. Electronic delivery to the City is preferred.

10. Terms: This contract shall be effective for one (1) year from City Council approval and shall be automatically renewable for up to four (4) annual, automatic renewals (pending City Council approval of the annual budget) for a possible contract term of five (5) years.

11. Ownership of Documents:

- a. All documents provided by the City are and remain the property of the City. OSPREY may retain reproduced copies of drawings and copies of other documents.
- b. All documents and records, whether in physical or electronic format, prepared by OSPREY or its subconsultant as part of the Project shall become the property of City; provided, however, that OSPREY shall have the unrestricted right to their use.
- c. OSPREY shall retain its rights in its standard document details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of OSPREY.
- d. OSPREY will grant the City, the State of Arkansas, and the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this agreement by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

12. Independent Contractor: OSPREY is an independent contractor of the City and shall maintain complete responsibility for applicable state or federal law on unemployment insurance, withholding taxes, social security, or other industrial, labor or discrimination law for its employees. OSPREY is responsible for its agents, sub-consultants, methods, and operations.

13. Notices: Any notice required to be given under this Agreement to either party to the other shall be sufficient if addressed and mailed, certified mail, postage paid, delivery, e-mail or fax (receipt confirmed), or overnight courier.

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

15. Termination: This Contract may be terminated by the City of Fayetteville or OSPREY for any reason with thirty (30) days written notice. If either party breaches this agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to remedy the breach. On termination of this agreement, the City shall pay OSPREY for the services performed through the date of termination

within thirty (30) days of acceptance of final invoice.

16. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in **advance** of the change in scope, cost or fees. No modification of this contract shall be binding unless made in writing and executed by both parties.
17. Applicable Law: This Agreement shall be governed by and construed in accord with the laws of the State of Arkansas. Venue for all legal disputes shall be Washington County, Arkansas.
18. Contract Administration: The Mayor or their Designated Representative shall be the Contract Administrator for this contract. OSPREY's Principal or their Designated Representative shall be the primary contact for all matters pertaining to this contract.
19. Professional Responsibility: OSPREY shall exercise reasonable skill, care, and diligence in the performance of services and will carry out its responsibilities in accordance with customarily accepted professional practices.
20. Permits & Licenses: OSPREY shall secure and maintain any and all permits and licenses required to complete this Contract.
21. Publications: Recognizing the importance of professional development on the part of OSPREY's employees and the importance of OSPREY's public relations OSPREY may prepare publications, such as technical papers, articles for periodicals, promotional materials, and press releases, in electronic or other format, pertaining to OSPREY's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to OSPREY. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. Approved materials may be used in a variety of situations and do not require additional review or approval for each use. The cost of OSPREY's activities pertaining to any such publication shall be for OSPREY's account.
22. Entire Agreement: These Contract documents constitute the entire agreement between the City of Fayetteville and OSPREY and may be modified only by a duly executed written instrument signed by the City of Fayetteville and OSPREY. In the event of a conflict between the terms of this Contract and the appendices, this Contract and the terms and conditions contained in Appendix B shall control.

23. Force Majeure: Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic, or any other cause beyond the reasonable control or contemplation of either party. Nothing herein relieves the City of its obligation to pay OSPREY for services actually rendered.
24. Severability: In the event that any court of competent jurisdiction shall determine that any provision of this agreement shall be unenforceable, then that provision shall be deemed to be null and void and the remaining provisions hereof shall remain in full force and effect.
25. Debarment Certification: OSPREY hereby provides debarment/suspension certification indicating compliance with the below Federal Executive Order. Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. OSPREY hereby attests its principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and OSPREY INITIATIVE LLC by its authorized officer has made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

OSPREY INITIATIVE LLC

By: _____
LIONELD JORDAN, MAYOR

By: Donald W. Bates Jr.
DONALD W. BATES JR., OWNER/PRESIDENT

ATTEST:

By: _____
Kara Paxton, City Clerk

Date Signed: _____

Date Signed: 7/12/24

RFP 24-04, Waterway Cleanup Services

APPENDIX A

Scope of Work & Fees

1. SCOPE OF WORK:

- A. **Osprey Initiative LLC** shall be responsible for the removal and disposal of trash and debris from the water channels and banks and collect data on the materials removed. The order of work locations and cleanup frequency will be determined by permission to access properties and amount of trash present. Park Operations will work with Contractor to determine schedule. The City of Fayetteville will notify impacted residents of work to be performed.
- B. **Osprey** shall perform an initial round of cleanups. **Osprey** shall physically remove trash in and along waterways including but not limited to the following focus areas (locations in bold are to be considered priority locations. Additional areas may be added on a case-by-case basis by the City in conjunction with **Osprey**):
 - i. **Town Branch**: Confluence with West Fork White River to Interstate 49
 - ii. **Spout Spring Branch**: Confluence with Town Branch to East 7th Street
 - iii. **College Branch**: Confluence with Town Branch to MLK Jr. Blvd.
 - iv. **Tanglewood Branch**: Confluence with Spout Spring Branch to MLK Jr. Blvd.
 - v. **Scull Creek**: Confluence with Mud Creek to Wilson Park
 - vi. **Hamestring Creek**: Ruppel Road to North Porter Road
 - vii. **Mud Creek**: North Old Missouri Road to North Gregg Avenue
 - viii. **Owl Creek**: Dale Clark Park to West Persimmon Street
 - ix. **Cato Springs Branch**: Confluence with Town Branch to Fulbright Expressway
 - x. **Clear Creek**: Confluence with Lake Fayetteville to Highway 265
- C. After initial cleanups, **Osprey** shall determine areas that may benefit from an upstream and/or in-stream trash capture devices based on trash present. Osprey shall provide information on trash capture device options and placement recommendations based on site conditions for each location. Once locations and number of trash capture devices are agreed upon with the City, Osprey shall procure, install, and regularly maintain and service trash capture devices to remove accumulated debris and keep the capture device working properly for duration of contract.
- D. Annually, for the duration of the contract, perform cleanup in focus areas for trash and debris not captured in devices.
- E. Analyze trash as collected to provide data and waste analysis reports. Analysis shall include any major factors that could affect data results, such as rain and flooding.

i. Data

1. Trash types at each location (including litter collected in capture devices)
2. Pounds of trash found at each cleanup location
3. Trash type by pound
4. Volume of Styrofoam

ii. Report

1. Written data summary for each site
2. Overall report on findings

F. All staff of **Osprey** shall be identifiable by a professional company name tag and/or uniform while the work is being performed under this contract.

2. GENERAL NOTES:

- A. **Osprey** Litter Collection Device Cleanout – The removal and sorting of all trash items from a Boom or Litter Gitter site. A site is defined as a trap system and surrounding area (approximately 50 yards upstream and downstream of the trap system).
- B. **Osprey** Litter Collection Device Deep Clean – The removal and sorting of all trash items within 100-yards of the trap system, upstream and downstream. To be performed quarterly.
- C. At a minimum, each site will be checked and serviced every two (2) weeks. Additionally, **Osprey** crew members will be on call for major rain events, or if repairs are required.
- D. **Osprey** field crews will maintain two (2) person teams, in adherence to safe work protocols.
- E. If a site does not require cleaning, the **Osprey** field crew will complete and submit a *Litter Collection Device Cleanout Form* for project records. If the site is cleaned, the field crew will complete and submit a *Litter Collection Device Cleanout Form* and an *Osprey Escaped Trash Assessment Program (ETAP) Data Card*. Forms will be uploaded to SharePoint by 10:59 PM CST on Sunday of each week.
- F. If material collected is less than two (2) 30-gallon trash bags, **Osprey** field crews will complete ETAP on all material. However, if the collected material exceeds two (2) 30-gallon trash bags, field crews will complete ETAP on 10% of a representative sampling of the total material.

3. COST/FEEES:

- A. **OSPREY** shall perform the services included in this proposal, over the length of 5 years, for a fee of \$ 786,560.00 .
 - i. The fee schedule is broken out yearly as submitted in the RFP, is contingent on City council approval of the annual budget and shall not exceed the cost estimate as follows:
 1. Year 1 - \$242,980 + litter device monthly maintenance agreement
 2. Year 2 - \$154,420 + litter device monthly maintenance agreement
 3. Year 3 - \$128,120 + litter device monthly maintenance agreement

4. Year 4 - \$128,120 + litter device monthly maintenance agreement
5. Year 5 - \$132,920 + litter device monthly maintenance agreement

ii. The litter device monthly maintenance agreement is based on the number of litter capture devices and will be subject to pre-approval annually. The monthly rate for servicing each device is

1. Litter Boom - \$2,100/month
2. Litter Gitter - \$2,500/month

iii. Additional services requested that fall outside the scope of this project shall be provided on a time-and-materials basis, subject to pre-approval.

B. Proposed yearly breakdown of cost (breakdown to be finalized with City and Osprey approval):

COST ESTIMATE
P24-036 - Year One
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	120 hrs @	\$150.00 /hr	\$18,000.00
Senior Project Manager	328 hrs @	\$120.00 /hr	\$39,360.00
Senior Field Lead	328 hrs @	\$75.00 /hr	\$24,600.00
Field Tech	1312 hrs @	\$50.00 /hr	\$65,600.00
Field Supplies	1 est @	\$1,000.00 /est	\$1,000.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	9800 miles @	\$1.00 /mile	\$9,800.00
Meals	41 days @	\$300.00 /day	\$12,300.00
Hotels	32 nights @	\$600.00 /night	\$19,200.00
			\$190,860.00

Task 2 - Device Location Recommendations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$13,200.00

Task 3 - Device Delivery/Installation

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Project Manager	40 hrs @	\$90.00 /hr	\$3,600.00
Senior Field Lead	40 hrs @	\$75.00 /hr	\$3,000.00
Field Tech	40 hrs @	\$50.00 /hr	\$2,000.00
Field Supplies	1 est @	\$1,000.00 /est	\$1,000.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$200.00 /day	\$800.00
Hotels	3 nights @	\$400.00 /night	\$1,200.00
			\$19,000.00

Task 4 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 5 - Coordinating/Management/Reporting

Executive Project Manager	56 hrs @	\$150.00 /hr	\$8,400.00
Senior Project Manager	56 hrs @	\$120.00 /hr	\$6,720.00
Admin	40 hrs @	\$60.00 /hr	\$2,400.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			<u>\$19,920.00</u>

Year 1 Total: \$242,980.00

Does not include Task 4: 12 Month Maintenance Agreement

COST ESTIMATE

P24-036 - Year Two

RFP 24-04 Waterway Cleanup Services

Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	80 hrs @	\$150.00 /hr	\$12,000.00
Senior Project Manager	240 hrs @	\$120.00 /hr	\$28,800.00
Senior Field Lead	240 hrs @	\$75.00 /hr	\$18,000.00
Field Tech	960 hrs @	\$50.00 /hr	\$48,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	30 days @	\$300.00 /day	\$9,000.00
Hotels	25 nights @	\$600.00 /night	\$15,000.00
			<u>\$139,300.00</u>

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			<u>\$15,120.00</u>

Year 2 Total: \$154,420.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Three
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$15,120.00

Year 3 Total: \$128,120.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Four
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$15,120.00

Year 4 Total: \$128,120.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Five
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	56 hrs @	\$150.00 /hr	\$8,400.00
Senior Project Manager	56 hrs @	\$120.00 /hr	\$6,720.00
Admin	40 hrs @	\$60.00 /hr	\$2,400.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$19,920.00

Year 5 Total: \$132,920.00

Does not include Task 2: 12 Month Maintenance Agreement



CITY OF
FAYETTEVILLE
ARKANSAS

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8256

TDD (Telecommunication Device for the Deaf): 479.521.1316

RFP (REQUEST FOR PROPOSAL)

Request for Proposal: RFP 24-04, Waterway Cleanup Services

DEADLINE: Thursday, May 9, 2024 before 2:00 PM, local time

SR. PURCHASING AGENT: Amanda Beilfuss, abeilfuss@fayetteville-ar.gov

DATE OF ISSUE AND ADVERTISEMENT: 04/14/2024

REQUEST FOR PROPOSAL
RFP 24-04, Waterway Cleanup Services

No late proposals shall be accepted. RFPs shall be submitted through the City's third-party electronic bidding platform or by submitting a sealed physical proposal to the City of Fayetteville, Purchasing Division at the below location.

City of Fayetteville
Purchasing Division – Room 306
113 West Mountain Street
Fayetteville, AR 72701

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

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

City of Fayetteville, AR
Request for Proposal
RFP 24-04, Waterway Cleanup Services

The City of Fayetteville, Arkansas, seeks proposals from qualified firms to perform cleanup services and data collection for designated waterways throughout Fayetteville. Any questions regarding this RFP shall be directed to Amanda Beilfuss, City of Fayetteville Sr. Purchasing Agent at abeilfuss@fayetteville-ar.gov or (479) 575-8220.

Solicitation documents and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids. All proposals shall be received by **Thursday, May 9, 2024 before 2:00 PM, Local Time** utilizing the electronic bidding software or by submitting a sealed physical proposal to the City of Fayetteville, Purchasing Division. All proposals are due before the time stated. No late proposals shall be accepted. Submitting electronically is strongly encouraged. The City of Fayetteville shall not be responsible for lost or misdirected proposals, or for failure of proposer's technical equipment.

All interested parties shall be qualified to do business and licensed in accordance with all applicable laws of the state and local governments where the project is located. A current registration with the Arkansas Secretary of State shall be valid at time of Proposal deadline.

The City of Fayetteville reserves the right to reject any or all Proposals and to waive irregularities therein, and all parties agree that such rejection shall be without liability on the part of the City of Fayetteville for any damage or claim brought by any interested party because of such rejections, nor shall any interested party seek any recourse of any kind against the City of Fayetteville because of such rejections. The filing of any Statement in response to this invitation shall constitute an agreement of the interested party to these conditions.

City of Fayetteville

By: Amanda Beilfuss, Sr. Purchasing Agent

P: 479.575.8220 abeilfuss@fayetteville-ar.gov

TDD (Telecommunications Device for the Deaf): (479) 521-1316

Date of advertisement: 04/14/2024

This publication was paid for by the Purchasing Division of the City of Fayetteville, Arkansas.

Amount paid: \$161.71

1. SUBMISSION OF A PROPOSAL SHALL INCLUDE:

Each proposal shall contain the following at a minimum. Proposer must also address detailed requirements as specified in the Scope of Work.

- a. References
- b. Current Customers
- c. Equipment and Safety Measures
- d. Cost Summary
- e. Additional Services (OPTIONAL)
- f. **Submitting and responding to this RFP:** Proposals shall be prepared simply and economically, providing a straightforward, concise description of its ability to meet the requirements for the project. Fancy bindings, colored displays, and promotional material are not required. Emphasis should be on completeness and clarity of content. All documents physically submitted should be typewritten on standard 8 ½" x 11" white papers and bound in one volume. Exceptions would be schematics, exhibits, one-page resumes, and City required forms. Limit proposal to twenty-five (25) pages or less, excluding one-page team resumes, references, and forms required by the City for completion. All proposals shall be sealed upon delivery to the City of Fayetteville.
 - i. **Option 1 –Electronic Submittal (*strongly encouraged*):** Proposers can go to www.fayetteville-ar.gov/bids and follow the prompts to submit a proposal within the electronic bidding platform. If a proposal is submitted electronically, a physical submission is not necessary. All Proposers must register in order to be able to submit. There is no fee for registration.
 - ii. **Option 2 – Physical Submittal:** All Proposers shall submit one (1) original copy of their proposal and shall be provided to the City in a sealed manner. FedEx, UPS, USPS, or other packages should be clearly marked with the RFP number on the outside of the mailing package.
- g. Proposals will be reviewed following the stated deadline, as shown on the cover sheet of this document. Only the names of Proposer's will be available after the deadline until a contract has been awarded by the Fayetteville City Council. All interested parties understand proposal documents will not be available until after a valid contract has been executed.
- h. Proposers shall submit a proposal based on documentation published by the Fayetteville Purchasing Division.

- i. Proposals must follow the format of the RFP. Proposers should structure their responses to follow the sequence of the RFP.
- j. Proposers shall have experience in work of the same or similar nature and must provide references that will satisfy the City of Fayetteville. Proposer shall furnish a reference list of clients for whom they have performed similar services and must provide information as requested in this document.
- k. Proposer is advised that exceptions to any of the terms contained in this RFP or the attached service agreement must be identified in its response to the RFP. Failure to do so may lead the City to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.
- l. Local time shall be defined as the time in Fayetteville, Arkansas on the due date of the deadline. Documents shall be received before the deadline time as shown by the atomic clock located in the Purchasing Division Office or electronic clock located in the City's third-party bidding software.

2. WRITTEN REQUESTS FOR INTERPRETATIONS OR CLARIFICATION:

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this proposal must be sent in writing via e-mail to the Purchasing Department. Responses to questions may be handled as an addendum if the response provides clarification to the requirements of the proposal. All such addenda shall become part of the contract documents. The City will not be responsible for any other explanation or interpretation of the proposed RFP made or given prior to the award of the contract.

3. DESCRIPTION OF SUPPLIES AND SERVICES:

Any manufacturer's names, trade name, brand name, catalog number, etc. used in specifications are for the purpose of describing and establishing general quality levels. Such references are NOT intended to be restrictive. Proposals shall be considered for all brands that meet the quality of the specifications listed for any items.

4. RIGHTS OF CITY OF FAYETTEVILLE IN REQUEST FOR PROPOSAL PROCESS:

In addition to all other rights of the City of Fayetteville, under state law, the City specifically reserves the right to the following:

- a. The City of Fayetteville reserves the right to rank firms and negotiate with the highest-ranking firm. Negotiation with an individual Proposer does not require negotiation with others.
- b. The City of Fayetteville reserves the right to select the proposal it believes will serve the best interest(s) of the City.
- c. The City of Fayetteville reserves the right to accept or reject any or all proposals.
- d. The City of Fayetteville reserves the right to cancel the entire request for proposal.
- e. The City of Fayetteville reserves the right to remedy or waive technical or immaterial errors in the request for proposal or in proposals submitted.

- f. The City of Fayetteville reserves the right to request any necessary clarifications, additional information or proposal data without changing the terms of the proposal.
- g. The City of Fayetteville reserves the right to make selection of the Proposer to perform the services required on the basis of the original proposals without negotiation.
- h. The City reserves the right to ask for a best and final offer from one or more Proposers. The best and final offer process is not guaranteed; therefore, Proposers shall submit and respond to this RFP on the most favorable terms available.

5. EVALUATION CRITERIA:

The evaluation criterion defines the factors that will be used by the selection committee to evaluate and score responsive, responsible and qualified proposals. Proposers shall include sufficient information to allow the selection committee to thoroughly evaluate and score proposals. Each proposal submitted shall be evaluated and ranked by a selection committee. The contract will be awarded to the most qualified Proposer, per the evaluation criteria listed in this RFP. Proposers are not guaranteed to be ranked.

6. COSTS INCURRED BY PROPOSERS:

All expenses involved with the preparation and submission of proposals to the City, or any work performed in connection therewith, shall be borne solely by the Proposer(s). No payment will be made for any responses received, or for any other effort required of, or made by, the Proposer(s) prior to contract commencement.

7. ORAL PRESENTATION:

An oral presentation and/or interview may be requested of any firm, at the selection committee's discretion.

8. CONFLICT OF INTEREST:

- a. The Proposer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided in City of Fayetteville Code Section 34.26 titled "Limited Authority of City Employee to Provide Services to the City".
- b. The Proposer shall promptly notify Amanda Beilfuss, City Sr. Purchasing Agent, in writing, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the Proposer's judgment or quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of which the Proposer may undertake and request an opinion to the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Proposer. The City agrees to communicate with the Proposer its opinion via e-mail or first-class mail within thirty days of receipt of notification.

9. WITHDRAWAL OF PROPOSAL:

A proposal may be withdrawn prior to the time set for the proposal submittal based on a written request from an authorized representative of the firm; however, a proposal shall not be withdrawn after the time set for the proposal.

10. LATE PROPOSAL OR MODIFICATIONS:

- a. Proposal and modifications received after the time set for the proposal submittal shall not be considered. Modifications in writing received prior to the deadline will be accepted. The City will not be responsible for misdirected bids. Proposers refer to their submission status in the online bidding portal or call the Purchasing Division at (479) 575-8220 to ensure receipt of their submittal documents prior to opening time and date listed.
- b. The time set for the deadline shall be local time for Fayetteville, AR on the date listed. All proposals shall be received in the Purchasing Division BEFORE the deadline stated. The official clock to determine local time shall be the atomic clock located in the Purchasing Division, Room 306 of City Hall, 113 W. Mountain, Fayetteville, AR.

11. CONSTITUTIONAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:

The laws of the State of Arkansas apply to any purchase made under this request for proposal. Proposers shall comply with all constitutional, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), & OSHA as applicable to this contract.

12. PROVISION FOR OTHER AGENCIES:

Unless otherwise stipulated by the Proposer, the Proposer agrees to make available to all Government agencies, departments, municipalities, and counties, the proposal prices submitted in accordance with said proposal terms and conditions therein, should any said governmental entity desire to buy under this proposal. Eligible users shall mean all state of Arkansas agencies, the legislative and judicial branches, political subdivisions (counties, local district school boards, community colleges, municipalities, counties, or other public agencies or authorities), which may desire to purchase under the terms and conditions of the contract.

13. COLLUSION:

The Proposer, by affixing his or her signature to this proposal, agrees to the following: "Proposer certifies that their proposal is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item(s) and/or services and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

14. RIGHT TO AUDIT, FOIA, AND JURISDICTION:

- a. The City of Fayetteville reserves the privilege of auditing a Contractor's records as such records relate to purchases between the City and said Contractor.
- b. Freedom of Information Act: City contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.
- c. Legal jurisdiction to resolve any disputes shall be Arkansas with Arkansas law applying to the case.

15. CITY INDEMNIFICATION:

The successful Proposer(s) agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the services or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

16. VARIANCE FROM STANDARD TERMS & CONDITIONS:

All standard terms and conditions stated in this request for proposal apply to this contract except as specifically stated in the subsequent sections of this document, which take precedence, and should be fully understood by Proposers prior to submitting a proposal on this requirement.

17. ADA REQUIREMENT FOR PUBLIC NOTICES & TRANSLATION:

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 479.521.1316 (telecommunications device for the deaf), no later than seven days prior to the deadline. Persons needing translation of this document shall contact the City of Fayetteville, Purchasing Division, immediately.

18. CERTIFICATE OF INSURANCE:

The successful Proposer shall provide a Certificate of Insurance of professional liability insurance in the amount of \$1 million US dollars, at minimum. Such Certificate of Insurance shall list the City as an additional insured and not be required unless firm is selected. Insurance shall remain valid throughout contract completion.

19. PAYMENTS AND INVOICING:

The Proposer must specify in their proposal the exact company name and address which must be the same as invoices submitted for payment as a result of award of this RFP. Further, the successful Proposer is responsible for immediately notifying the Purchasing Division of any company name change, which would cause invoicing to change from the name used at the time of the original RFP. Payment will be made within thirty days of invoice received. The City of Fayetteville is very credit worthy and will not pay any interest or penalty for untimely payments. **Payments can be processed through Proposer's acceptance of Visa at no additional costs to the City for expedited payment processing.** The City will not agree to allow any increase in hourly rates by the contract without PRIOR Fayetteville City Council approval.

20. CANCELLATION:

- a. The City reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the Contractor in writing of the intention to cancel or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.
- b. Failure of the contractor to comply with any of the provisions of the contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.
- c. In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source, any items and/or services which have not been delivered within the period of time from the date of order as determined by the City of Fayetteville.

- d. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Contractor of such occurrence and contract shall terminate of the last day of the current fiscal period without penalty or expense to the City.

21. ASSIGNMENT, SUBCONTRACTING, CORPORATE ACQUISITIONS AND/OR MERGERS:

- a. The Contractor shall perform this contract. No assignment of subcontracting shall be allowed without prior written consent of the City. If a Proposer intends to subcontract a portion of this work, the Proposer shall disclose such intent in the proposal submitted as a result of this RFP.
- b. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) calendar days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first.

22. NON-EXCLUSIVE CONTRACT:

Award of this RFP shall impose no obligation on the City to utilize the Contractor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the City's best interest. In the case of multiple-phase contracts, this provision shall apply separately to each item.

23. LOBBYING:

Lobbying of selection committee members, City of Fayetteville employees, or elected officials regarding request for proposals, request for qualifications, bids or contracts, during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, and agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the request for proposal, request for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the City of Fayetteville and shall be prohibited until either an award is final or the protest is finally resolved by the City of Fayetteville; provided, however, nothing herein shall prohibit a prospective/bidder/proposer from contacting the Purchasing Division to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any request for proposal, request for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any request for proposal, request for qualification, bid or contract to be rejected.

24. ADDITIONAL REQUIREMENTS:

The City reserves the right to request additional services relating to this RFP from the Proposer. When approved by the City as an amendment to the contract and authorized in writing prior to work, the Contractor shall provide such additional requirements as may become necessary.

25. SERVICES AGREEMENT:

A written agreement, in substantially the form attached, incorporating the RFP and the successful proposal will be prepared by the City, signed by the successful Proposer and presented to the City of Fayetteville for approval and signature of the Mayor.

26. INTEGRITY OF REQUEST FOR PROPOSAL (RFP) DOCUMENTS:

Proposers shall use the original RFP form(s) provided by the Purchasing Division and enter information only in the spaces where a response is requested. Proposers may use an attachment as an addendum to the RFP form(s) if sufficient space is not available on the original form for the Proposer to enter a complete response. **Any modifications or alterations to the original RFP documents by the Proposer, whether intentional or otherwise, will constitute grounds for rejection of such RFP response.** Any such modifications or alterations a Proposer wishes to propose shall be clearly stated in the Proposer's RFP response and presented in the form of an addendum to the original RFP documents.

27. OTHER GENERAL CONDITIONS:

- a. Proposers must provide the City with their proposals signed by an employee having legal authority to submit proposals on behalf of the Proposer. The entire cost of preparing and providing responses shall be borne by the Proposer.
- b. The City reserves the right to request any additional information it deems necessary from any or all Proposers after the submission deadline.
- c. This solicitation is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the City to pay for any costs incurred by Proposer in preparation. It shall be clearly understood that any costs incurred by the Proposer in responding to this request for proposal is at the Proposer's own risk and expense as a cost of doing business. The City of Fayetteville shall not be liable for reimbursement to the Proposer for any expense so incurred, regardless of whether or not the proposal is accepted.
- d. If products, components, or services other than those described in this bid document are proposed, the Proposer must include complete descriptive literature for each. All requests for additional information must be received within five working days following the request.
- e. Any uncertainties shall be brought to the attention to Amanda Beilfuss immediately via telephone (479.575.8220) or e-mail (abeilfuss@fayetteville-ar.gov). It is the intent and goal of the City of Fayetteville Purchasing Division to provide documents providing a clear and accurate understanding of the scope of work to be completed and/or goods to be provided. We encourage all interested parties to ask questions to enable all Proposers to be on equal terms.
- f. Any inquiries or requests for explanation in regard to the City's requirements should be made promptly to Amanda Beilfuss, City of Fayetteville, Sr. Purchasing Agent via e-mail (abeilfuss@fayetteville-ar.gov) or telephone (479.575.8220). No oral interpretation or clarifications will be given as to the meaning of any part of this request for proposal. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms via written addendum. Names of firms submitting any questions, clarifications, or requests will not be disclosed until after a contract is in place.
- g. At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews.

- h. Any information provided herein is intended to assist the Proposer in the preparation of proposals necessary to properly respond to this RFP. The RFP is designed to provide qualified Proposers with sufficient basic information to submit proposals meeting minimum specifications and/or test requirements but is not intended to limit an RFP's content or to exclude any relevant or essential data.
- i. Proposers irrevocably consent that any legal action or proceeding against it under, arising out of or in any manner relating to this Contract shall be controlled by Arkansas law. Proposer hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.
- j. The successful Proposer shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of City of Fayetteville. In case the successful Proposer assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the successful Proposer shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this contract.
- k. The successful Proposer's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. The successful Proposer shall keep himself/herself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in these Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, s/he shall herewith report the same in writing to the City of Fayetteville.

1. INTRODUCTION:

Fayetteville Park Operations intends to award a 1-year contract, automatically renewable for 4 (four) additional 1-year terms to engage a company/firm to provide litter cleanup services focused on unsanctioned campsites and waterways. A separate firm is currently removing trash at unsanctioned camps, but waterway cleanup (streams and banks) is outside of the existing firm's contract scope.

20.6 miles of waterway have been identified as having trash and debris, with some stretches heavily impacted and a cleanup priority. Trash and debris are considered to be items related to human activity that are not naturally occurring or intended to be in the waterway and include, but are not limited to:

- a. Food and drink wrappers and containers
- b. Plastic, expanded polystyrene foam, lumber, metal, or other items typically seen as foreign in waterways
- c. Items related to nearby encampments such as tarps, tents, bedding, and clothing
- d. Potentially hazardous materials such as glass, metal, nails, and other sharp objects

The City will be soliciting proposals from qualified professional firms with experience in the removal of trash, deployment and maintenance of trash capture devices, and data analysis and reporting of the litter removed.

2. SCOPE OF WORK:

The awarded Proposer ("Contractor") shall remove and dispose of trash and debris from the water channels and banks and shall collect data on the materials removed. The order of work locations and cleanup frequency will be determined by permission to access properties and amount of trash present. Park Operations will work with Contractor to determine schedule. The City of Fayetteville will notify impacted residents of work to be performed.

- a. Perform initial round of cleanups. Contractor shall physically remove trash in and along waterways including but not limited to the following focus areas (locations in bold are to be considered priority locations):
 - i. **Town Branch: Confluence with West Fork White River to Interstate 49**
 - ii. **Spout Spring Branch: 7th – Confluence with Town Branch to 7th Street**
 - iii. **College Branch: Confluence with Town Branch to MLK Jr. Blvd.**
 - iv. **Tanglewood Branch: Confluence with Spout Spring Branch to MLK Jr. Blvd.**
 - v. **Scull Creek: Confluence with Mud Creek to Wilson Park**
 - vi. **Hamestring Creek: Ruppel Road to North Porter Road**
 - vii. **Mud Creek: North Old Missouri Road to North Gregg Avenue**
 - viii. **Owl Creek: Dale Clark Park to West Persimmon Street**

- ix. Cato Springs Branch: Confluence with Town Branch to Fulbright Expressway
 - x. Clear Creek: Confluence with Lake Fayetteville at Highway 265
- b. Perform an initial cleanup in focus areas. Additional areas may be added on a case-by-case basis by the City in conjunction with the Contractor, as needed.
 - c. After initial cleanups, determine areas that may benefit from an upstream and/or in-stream trash capture devices based on trash present. Provide information on trash capture device options and placement recommendations based on site conditions for each location. Procure, install, and regularly maintain and service trash capture devices to remove accumulated debris and keep the capture device working properly for duration of contract.
 - d. Annually, for the duration of the contract, perform cleanup in focus areas for trash and debris not captured in devices.
 - e. Analyze trash as collected to provide data and waste analysis reports. Analysis shall include any major factors that could affect data results, such as rain and flooding.
 - i. Data
 - 1. Trash types at each location (including litter collected in capture devices)
 - 2. Pounds of trash found at each cleanup location
 - 3. Trash type by pound
 - 4. Volume of Styrofoam
 - ii. Report
 - 1. Written data summary for each site
 - 2. Overall report on findings

3. INSURANCE:

- a. Contractor shall provide a Certificate of Insurance supplying commercial general liability coverage, prior to commencement of any work. Such certificate shall list the City of Fayetteville as an additional insured. Listing the City of Fayetteville as a Certificate Holder is NOT an acceptable substitute. Insurance shall remain valid throughout project completion. The following list of insurance coverages shall be considered the minimum coverage the City will accept:
 - i. Worker's Compensation Insurance: Statutory Amount
 - ii. Automotive Insurance covering all vehicles and trailers, if applicable
 - iii. General Liability: \$1,000,000 each occurrence; \$3,000,000 aggregate
- b. All staff of Contractor shall be identifiable by a professional company name tag and/or uniform while the work is being performed under this contract.

4. PROPOSAL FORMAT: Responses shall be organized in the following format and informational sequence:

- a. **Part I – Signature Pages:** Section G of this RFP, completed – required with RFP response
- b. **Part II – References:** Section C of this RFP, completed – required with RFP response
- c. **Part III – Method and Safety Measures:** Section D of this RFP – required with RFP response

d. **Part IV – Cost Summary:** Section E of this RFP– required with RFP response

e. **Part V – Additional Services (OPTIONAL):** Section F of this RFP

5. **CONTRACT FORMATION:**

If the negotiation produces mutual agreement, a contract will be considered for approval by the City of Fayetteville City Council. If negotiations with the highest-ranking Proposer fail, negotiations may be initiated with the next highest-ranking Proposer until an agreement is reached. The City reserves the right to reject all offers and end the process without executing a contract.

6. **CONTRACT TERM:**

Contract shall be considered valid for one (1) year from Council approval with four (4) annual automatic renewals pending City Council approval of the annual budget. The contract may be terminated by either party with thirty (30) days written notice without penalty.

7. **SELECTION CRITERIA:**

The following criteria will be used by the City to evaluate and score responsive proposals. Proposers shall include sufficient information to allow the City to thoroughly evaluate and score the proposal. Each proposal submitted is not required to be ranked by the selection committee. The contract may be awarded to the most qualified firm, per the evaluation criteria listed below, based on the evaluation of the selection committee. Following the evaluation of the proposals, the Selection Committee may request that the top-ranking firm(s) make an oral presentation or be interviewed. If presentations are necessary, they will take place in Fayetteville, Arkansas. Notices will be sent by the Purchasing Division.

- 1) 20% **Qualifications in Relation to Specific Project to be Performed:** Information reflecting qualifications of the consultant, partners, and project team. Indicated specialized experience and technical competence of the firm in connection with the type and complexity of the service required. Subcontractors, if used, shall be listed with information on their organization.
- 2) 20% **Experience, Competence, and Capacity for Performance:** Information reflecting the names, titles, and qualifications (including experience and technical competence) of the major personnel assigned to this specific project.
- 3) 30% **Proposed Method of Doing Work:** A proposed work plan (description of how the project would be conducted as well as other facts concerning approach to scope) indicating methods and schedules for accomplishing scope of work. Include with this the amount of work presently underway.
- 4) 10% **Past Performance:** Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, the professional firm's past performance records with City and others will be used, including quality of work, timely performance, diligence, and any other pertinent information. Firm will provide a list of similar jobs performed and person whom the City can contact for information.

- 5) 20% **Cost/Fees:** Complete costs and fees as described in this RFP and for delivery of the proposal including fiscal feasibility and financial stability. All fees shall be clearly identified with RFP response and be itemized as much as possible.

9. **ADDITIONAL DOCUMENTS AND INFORMATION:** The following documents are included with this solicitation as additional information:

- a. Appendix A: GIS Map of Parcels Impacted

CONTINUES ON NEXT PAGE

City of Fayetteville, AR
RFP 24-04, Waterway Cleanup Services
SECTION C: References

The following information is required from all firms so all statements of qualification may be reviewed and properly evaluated:

COMPANY NAME: _____

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

TOTAL NUMBER OF CURRENT EMPLOYEES: _____ FULL TIME _____ PART TIME

NUMBER OF EMPLOYEES PLANNED FOR THIS CONTRACT: _____ FULL TIME _____ PART TIME

PLEASE LIST FOUR (4) REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED CONTRACT SERVICES FOR WITHIN THE PAST FIVE (5) YEARS (All fields must be completed):

1. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

3. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

2. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

4. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

1. All proposers shall provide method of performing work under this contract. If applicable, provide an itemized list of equipment to be used, including manufacturer and model numbers (attach additional pages if necessary):

2. All proposers shall provide a description of all safety measures to be followed while performing work under this contract.

The City of Fayetteville intends on awarding to one Proposer; however, the City reserves the right to award based on the best interest of the City, based on the Selection Criteria presented in this RFP.

Scope of work shall include ALL Waterways as described in this RFP, including Appendix Document (GIS map as visual). Price proposed shall be inclusive of all areas described for all work described in the Scope of Work. Price proposed shall be listed for entire Contract duration of five (5) years. Proposer shall list any anticipated increases in cost.

NAME OF COMPANY: _____

LUMP SUM COST PROPOSED: _____

Additional services shall be presented in the form of hourly rates along with a description and documentation of other services that may be provided within this proposal. Rates shall include necessary equipment, tools, and labor. Proposal may also include a percent markup on any item the City may purchase for use through the Contractor.

1. Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.
2. Mark up % on materials purchased for the City (_____ %). Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.

ADDITIONAL PROPOSED SERVICES/PRODUCTS:

Proposer shall submit additional services for offering by completing the form below or may attach hourly rates and documentation of other services that may be provided within this proposal.

1. Description of Service: _____
Hourly Rate: _____
2. Description of Service: _____
Hourly Rate: _____
3. Description of Service: _____
Hourly Rate: _____
4. Additional Capture Devices (cost per device): _____

1. DISCLOSURE INFORMATION

- a. Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Proposer response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.
- i. If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

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

_____ 1) NO KNOWN RELATIONSHIP EXISTS

_____ 2) RELATIONSHIP EXISTS (Please explain):

- b. I certify that; as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true; and my organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.
- c. Proposer agrees that they shall have a current, valid registration with the Arkansas Secretary of State at time of RFP deadline OR be able to provide proof of registration before recommendation of award to Fayetteville City Council.
- d. Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.
- e. Pursuant Arkansas Code Annotated §25-1-1002, the Contractor agrees and certifies that they do not currently boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-1002. If at any time during the contract the contractor decides to boycott Energy, Fossil Fuel, Firearms, and/or Ammunition Industries, the contractor must notify the contracted public entity in writing.

2. PRIMARY CONTACT INFORMATION

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews. **NOTE: Each Proposer shall submit to the City a primary contact name, e-mail address, and phone number (preferably a cell phone number) where the City selection committee can call for clarification or interview via telephone.**

Corporate Name of Firm: _____

Primary Contact: _____ Title of Primary Contact: _____

Phone#1 (cell preferred): _____ Phone#2: _____

E-Mail Address: _____

3. ACKNOWLEDGEMENT OF ADDENDA

Acknowledge receipt of addenda for this invitation to bid, request for proposal, or request for qualification by signing and dating below. All addendums are hereby made a part of the bid or RFP documents to the same extent as though it were originally included therein. Proposers/Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject Contractor to disqualification.

ADDENDUM NO.	SIGNATURE AND PRINTED NAME	DATE ACKNOWLEDGED

4. DEBARMENT CERTIFICATION:

- As an interested party on this project, you are required to provide debarment/suspension certification indicating compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.
- Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.
- Signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

5. SIGNATURE SUBMITTAL:

NAME OF COMPANY: _____

PHYSICAL ADDRESS: _____

MAILING ADDRESS: _____

TAX ID #: _____ AR. SECRETARY OF STATE FILING #: _____

PHONE: _____ FAX: _____

E-MAIL: _____

By submitting your response, you certify that you are authorized to represent and bind your company :

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ DATE: _____

END OF RFP DOCUMENT

RFP 24-04, Addendum 1



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Monday, April 15, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-04, Waterway Cleanup Services

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. PRE-PROPOSAL CONFERENCE:

- a. There will be a non-mandatory pre-proposal conference on site at the Walker Park batting cages parking lot on **Tuesday, April 30th at 10:00 AM**. All interested parties are invited to attend.

Location: Walker Park Batting Cages Parking Lot (Next to the Razorback Greenway)
10 W. 15th St., Fayetteville, AR 72701

RFP 24-04, Addendum 2



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Friday, April 19, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-04, Waterway Cleanup Services

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. Clarification – Proposer shall hold a current, valid registration with the Arkansas Secretary of State **OR** be able to provide proof of registration before recommendation of award to Fayetteville City Council.

RFP 24-04, Addendum 3



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Thursday, May 2, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-04, Waterway Cleanup Services

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. A non-mandatory pre-proposal conference was held on Tuesday, April 30, 2024 at 10:00 AM on-site at the Walker Park Batting Cages Parking Lot. The listing of attendees is also attached to this addendum for disclosure to all interested parties (Attachment A).
 - a. Attendees:
 - i. City of Fayetteville:
 1. Amanda Beilfuss, Sr. Purchasing Agent
 2. Kenny Fitch, Purchasing Agent
 3. Byron Humphry, Park Operations Director
 4. Kristina Jones, Volunteer & Community Programs Coordinator
 - ii. Vendors:
 1. Titan Lawn & Landscape
2. Questions – The following questions have been received and answered by the corresponding department:
 - a. Question: When trash analyzation is complete, is there a certain method of disposal that has to be used by the Contractor?
 - i. Answer: *The City will have an account number set up for the project. The Contractor shall bring the sorted trash and recycling through the City's Transfer Station, and Recycling and Trash Collections will bill the City for what is brought in.*
 - b. Question: If the City recognized a new, additional waterway to be cleaned, how quickly would the Contractor need to act on that (mobilization time)?
 - i. Answer: *The Contractor will have up to one (1) month to mobilize if/when additional waterways are added.*

- c. Question: Is there any deep water in any of the proposed waterways?
- i. Answer: *The deepest section is likely the southern part of the Town Branch. Depending on rainfall, everything should be shallow enough to wade through.*
3. Clarifications – The following is being offered to provide some clarification regarding this RFP:
- a. The performance of the entire scope of work may be divided out over the full five (5) year contract.
- b. The 'SECTION E: Cost Summary' section of the RFP has been revised and is attached to this addendum (Attachment B). **ALL PROPOSERS SHALL USE THIS UPDATED COST SUMMARY FORM, OR PROPOSAL MAY BE REJECTED.** The RFP on the online portal has also been updated to reflect these changes.
- c. Below are links to websites showing examples of catch devices (Attachment B). These are being provided as examples; all substitutions will be considered.
- i. <https://www.epa.gov/trash-free-waters/trash-capture-projects#pc>
- ii. https://19january2021snapshot.epa.gov/trash-free-waters/trash-capture-technologies_.html#open
- iii. <https://www.elastec.com/products/floating-boom-barriers/trash-debris-boom/>



CITY OF
FAYETTEVILLE
ARKANSAS

City of Fayetteville, Arkansas

Attendance Sheet

BID/RFP/RFQ #: 24-04

Description: Waterway Cleanup Services

Function (circle one) : Bid Opening, Selection Committee Meeting, Pre-Bid, Interview

Date: 04 / 30 / 2024

Time: 10:00 AM

City staff e-mail includes "@fayetteville-ar.gov"

	Name	Company	Title	Phone	Email
1	Amanda Beilfuss	CoF	Sr. Purch. Agent	575-8220	abeilfuss@
2	KENNY FITCH	CoF	PURCH AGENT	575-8258	fitch@
3	Byron Humphrey	CoF	Park Operations Dir.	575-8368	bhumph@
4	Kristina Jones	CoF	Volunteer Coordinator	444 3467	kjones@fay...
5	Roy Lovell	Titan Law & LANDSCAPE	Owner	479-200-6702	lawrtitan@gmail.com
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

** All Bid Openings are also streamed live on the City of Fayetteville's YouTube Channel.

The City of Fayetteville intends on awarding to one Proposer; however, the City reserves the right to award based on the best interest of the City, based on the Selection Criteria presented in this RFP.

Scope of work shall include ALL Waterways as described in this RFP, including Appendix Document (GIS map as visual). Price proposed shall be inclusive of all areas described for all work described in the Scope of Work. Price proposed shall be listed for entire Contract duration of five (5) years. Proposer shall list any anticipated increases in cost.

NAME OF COMPANY: _____

LUMP SUM COST PROPOSED: _____

Additional services shall be presented in the form of hourly rates along with a description and documentation of other services that may be provided within this proposal. Rates shall include necessary equipment, tools, and labor. Proposal may also include a percent markup on any item the City may purchase for use through the Contractor.

1. Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.
2. Mark up % on materials purchased for the City (_____ %). Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.

ADDITIONAL PROPOSED SERVICES/PRODUCTS:

Proposer shall submit additional services for offering by completing the form below or may attach hourly rates and documentation of other services that may be provided within this proposal.

1. Description of Service: _____
Hourly Rate: _____
2. Description of Service: _____
Hourly Rate: _____
3. Description of Service: _____
Hourly Rate: _____
4. Additional Capture Devices (cost per device): _____



CITY OF
FAYETTEVILLE
ARKANSAS

RFP 24-04 Addendum 3 Osprey Initiative Supplier Response

Event Information

Number: RFP 24-04 Addendum 3
Title: Waterway Cleanup Services
Type: Request for Proposal
Issue Date: 4/14/2024
Deadline: 5/9/2024 02:00 PM (CT)
Notes: The City of Fayetteville, Arkansas, seeks proposals from qualified firms to perform cleanup services and data collection for designated waterways throughout Fayetteville. Any questions regarding this RFP shall be directed to Amanda Beilfuss, City of Fayetteville Sr. Purchasing Agent at abeilfuss@fayetteville-ar.gov or (479) 575-8220.

Contact Information

Contact: Amanda Beilfuss
Address: Purchasing
Room 306
City Hall
113 West Mountain Street - Room 306
Fayetteville, AR 72701
Email: abeilfuss@fayetteville-ar.gov

Osprey Initiative Information

Address: 651 Olive Avenue
Fairhope, AL 36532
Phone: (601) 842-7305
Web Address: www.osprey.world

By submitting your response, you certify that you are authorized to represent and bind your company.

Donald W. Bates Jr

Signature

Submitted at 5/8/2024 02:00:38 PM (CT)

officeadmin@osprey.world

Email

Requested Attachments

RFP 24-04, Waterway Cleanup Services

RFP 24-04 Osprey Initiative
Proposal.pdf

Please attach the signed and completed RFP form, located in the 'Attachments' tab, along with Proposal. Please verify that the RFP form submitted has the revised Cost Summary form that was provided with Addendum 3.

Response Attachments

Osprey Product Flyers.pdf

Informational flyers for Osprey products and services available

Osprey Combined Resumes.pdf

Key Personnel Resumes

Bid Attributes

1 Arkansas Secretary of State Filing Number:

Please provide your current, valid Arkansas Secretary of State Filing Number or Application Confirmation Number to register with the Arkansas Secretary of State

In Progress. Shall be completed before funds are awarded.

2 Addendum Acknowledgement

By selecting "I agree", you acknowledge that you have read all addendum(s) that have been issued for this solicitation, if applicable.

☒ I agree



May 8, 2024

**City of Fayetteville Purchasing Division
RFP 24-04, Waterway Cleanup Services
Osprey Initiative LLC. Official Quote
Proposal Number: P24-036**

Attn: Amanda Beilfuss
Senior Purchasing Agent

Ms. Beilfuss,

This letter and the attachments contained herein represent an official scope of services and proposal from Osprey Initiative LLC. in response to the City of Fayetteville's Request for Proposals *RFP 24-04 Waterway Cleanup Services*. The tasks below incorporate all activities outlined in the "Scope of Service" section of the RFP, as well as the Additional Information referenced in "Section D: Method and Safety Measures." A cost estimate is included, in addition to "Section E: Cost Summary." The cost estimate shows the fees for the initial year and the subsequent four (4) years, should the project be extended.

Task 1 – Tactical Cleanups of 10 Priority Locations

Over the initial 12-month contract, Osprey will complete tactical cleanups of the 10 locations identified within the Scope of Work. Osprey will create and implement a cleanup plan for each location, accounting for access, safety, and feasibility. Osprey will enter the cleanup locations on foot, or by boat, and will remove the material by hand to minimize environmental impact. The work will be performed by a team of six (6) Osprey staff members. The staff time allocated to the cleanup activities is included in the cost estimate and is based on the corresponding distances and expected efforts for each stretch of waterway. If these distances are changed, the required manpower will be adjusted accordingly.

- i. Town Branch: Confluence with West Fork White River to Interstate 49: **4.5 miles**
- ii. Spout Spring Branch: 7th – Confluence with Town Branch to 7th Street **1 mile**
- iii. College Branch: Confluence with Town Branch to MLK Jr. Blvd. **1 mile**
- iv. Tanglewood Branch: Confluence with Spout Spring Branch to MLK Jr. Blvd. **.4 miles**
- v. Scull Creek: Confluence with Mud Creek to Wilson Park **3.6 miles**
- vi. Hamstring Creek: Ruppel Road to North Porter Road **1.3 miles**
- vii. Mud Creek: North Old Missouri Road to North Gregg Avenue **2.2 miles**
- viii. Owl Creek: Dale Clark Park to West Persimmon Street **1.25 miles**
- ix. Cato Springs Branch: Confluence with Town Branch to Fulbright Expressway **2 miles**
- x. Clear Creek: Confluence with Lake Fayetteville at Highway 265 **Distance Unclear**

If the City of Fayetteville chooses to renew the project contract for an additional four years, Osprey will perform a tactical cleanup of each of these locations annually. If the city deems that any/all of these sites no longer require annual cleanups, Osprey will work with city officials to select new locations. It should also be noted that Osprey expects the time needed for each tactical cleanup to decrease after the first year and this is reflected in the cost estimate. The methods and safety measures for these activities are described in the attached Standard Operating Procedures.



Task 2 – Device Location Recommendations

Working with the City of Fayetteville, Osprey Initiative will assess the data collected from the Tactical Cleanups in Task One to recommend sites for device installations. The locations will be chosen based on a combination of expected quantity of litter, access, safety, feasibility, and approval from the City. Osprey will assist the city in obtaining all necessary permissions and permits.

Osprey Initiative provides several different litter interception devices based on the needs of the client and the characteristics of the installation sites. Osprey Litter Gitters and Litter Booms are described in the Addendum under “Additional Products.” Osprey is familiar with the Fayetteville area and the dynamics of the waterways there. The cost per device is shown in the cost estimate as a monthly fee. We do not currently know the location or number of devices and as such, providing a firm cost estimate for each site is not feasible. However, Osprey is well equipped to work with the City of Fayetteville within the available budget and timeline to customize our devices and installation processes for the challenges and characteristics of each site.

Task 3 – Device Delivery and Installation

An Osprey crew will deliver and install all approved litter collection devices. Osprey will ensure the gear is installed in a manner that is congruent with any city requirements. The devices will be anchored and stationary within their respective waterways, while retaining the ability to withstand variable flow rates and water depths. All Osprey technology, and the corresponding anchoring techniques, allow wildlife to navigate under and around the device.

Task 4 – 12 Month Maintenance Agreement

Throughout the 12-month period of the initial contract, Osprey will provide bi-monthly maintenance for the new litter interception devices. In addition, Osprey staff will be on-call to check the traps within 72 hours of significant rain events. Osprey technicians will clean the device itself, as well as the shoreline footprint around the device and anchor points during each visit. If the contract is renewed for the additional four-year intervals, Osprey will continue to perform the maintenance of these devices.

Maintenance will also include any small repairs necessary to keep the device functional and effectively collecting litter. If a device becomes damaged beyond repair, Osprey will communicate this to the city and collaborate on a plan for replacement. Osprey will remove and safely dispose of all collected material. When feasible, material will be recycled instead of sent to the landfill. Osprey will work with the City of Fayetteville to reevaluate the effectiveness of the devices and the maintenance schedule at regular intervals throughout the project and again before each of the renewal periods. The methods and safety measures for these activities are described in the attached Standard Operating Procedures.

Task 5 – Coordinating/Management/ Reporting

Task 5 covers all costs related to the management, data collection, and reporting requirements for this project. Osprey will record an extensive data set at each of the device maintenance visits and tactical cleanups. This will include weights, volumes, and types of



material recovered. The RFP specifically requests that the volume of Styrofoam be tracked throughout the project and Osprey will ensure that this metric is captured.

The EPA modified ETAP methodology will be utilized on a representative sample of the collected material to produce a litter profile over the extent of the project. An example of the ETAP data card is available in the attachments. This data will be tracked on ETAP field data sheets and recorded in a Microsoft Excel Spreadsheet. ETAP captures the types of litter being collected, as well as the condition, and possible sources. During an ETAP audit, materials are divided into one of six (6) main categories: Paper, Glass, Metal, Plastic, Styrofoam, and Other. Within those categories, material is further classified as a specific item: chip bag, beverage can, plastic cup, etc. Each item in the ETAP audit is accounted for, and the condition of the item is recorded as either Intact, Partially Intact, or Degraded. This condition classification helps to determine if the litter at that site is new or “legacy.” A large percentage of legacy litter at a site may indicate that the location had a litter issue in the past, but that it no longer does. Conversely, a site full of Intact material usually signals a current problem. A quarterly report will be provided to the City of Fayetteville documenting the quantity of litter and recyclables removed. Osprey will also provide an annual report at the end of each year of implementation with a full litter profile and ETAP breakdown.

This scope of services and the corresponding cost estimate are Osprey’s efforts to provide a proposal that is in line with the requirements of the RFP. Consequently, the Cost Estimate reflects our experience in the local area and on projects with similar expenses. Once funding is awarded, Osprey will work diligently with city representatives and any other stakeholders to ensure that the actual products and services delivered are those that best fit the needs and goals of the City of Fayetteville. We will strive to reduce costs and utilize local labor when possible.

Osprey appreciates the opportunity to provide this proposal. The other required forms are attached to this document. If any additional information is needed, please do not hesitate to reach out.

Thank you for your time and consideration.


Yael Girard
Senior Project Manager
Osprey Initiative, LLC

Attachments:

- RFP 24-04 – Completed and Signed
- Osprey Itemized Cost Estimate
- Litter Collection Device SOP
- Tactical Cleanup SOP
- Dangerous Materials SOP
- ETAP Data Card

1. DISCLOSURE INFORMATION

- a. Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Proposer response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.
- i. If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

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

____X____ 1) NO KNOWN RELATIONSHIP EXISTS

____ 2) RELATIONSHIP EXISTS (Please explain):

- b. I certify that; as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true; and my organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.
- c. Proposer agrees that they shall have a current, valid registration with the Arkansas Secretary of State at time of RFP deadline OR be able to provide proof of registration before recommendation of award to Fayetteville City Council.
- d. Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.
- e. Pursuant Arkansas Code Annotated §25-1-1002, the Contractor agrees and certifies that they do not currently boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-1002. If at any time during the contract the contractor decides to boycott Energy, Fossil Fuel, Firearms, and/or Ammunition Industries, the contractor must notify the contracted public entity in writing.

2. PRIMARY CONTACT INFORMATION

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews. **NOTE: Each Proposer shall submit to the City a primary contact name, e-mail address, and phone number (preferably a cell phone number) where the City selection committee can call for clarification or interview via telephone.**

Corporate Name of Firm: ___Osprey Initiative LLC_____

Primary Contact: ___Donald W. Bates Jr___ Title of Primary Contact: ___Owner/President_____

Phone#1 (cell preferred): ___(601) 842-7305___ Phone#2: ___(251) 525-9727_____

E-Mail Address: ___don.bates@osprey.world_____

3. ACKNOWLEDGEMENT OF ADDENDA

Acknowledge receipt of addenda for this invitation to bid, request for proposal, or request for qualification by signing and dating below. All addendums are hereby made a part of the bid or RFP documents to the same extent as though it were originally included therein. Proposers/Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject Contractor to disqualification.

ADDENDUM NO.	SIGNATURE AND PRINTED NAME	DATE ACKNOWLEDGED
Addendum 1	<i>Donald Bates</i> Donald W. Bates Jr	5/8/2024
Addendum 2	<i>Donald Bates</i> Donald W. Bates Jr	5/8/2024
Addendum 3	<i>Donald Bates</i> Donald W. Bates Jr	5/8/2024

4. DEBARMENT CERTIFICATION:

- As an interested party on this project, you are required to provide debarment/suspension certification indicating compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.
- Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.
- Signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

5. SIGNATURE SUBMITTAL:

NAME OF COMPANY: __Osprey initiative LLC_____

PHYSICAL ADDRESS: __2350 Halls Mill Road, Mobile, AL 36606_____

MAILING ADDRESS: __651 Olive Ave, Fairhope AL 36532_____

TAX ID #: __81-5089230_____ AR. SECRETARY OF STATE FILING #: __In progress_____

PHONE: ____ (251) 525-9727 _____ FAX: _____ N/A _____

E-MAIL: _____ don.bates@osprey.world _____

By submitting your response, you certify that you are authorized to represent and bind your company :

SIGNATURE:

Donald Bates

PRINTED NAME: ____ Donald W. Bates Jr. _____

TITLE: ____ Owner/President Osprey Initiative _____ DATE: __5/8/2024_____

END OF RFP DOCUMENT

City of Fayetteville, AR
RFP 24-04, Waterway Cleanup Services
SECTION C: References

The following information is required from all firms so all statements of qualification may be reviewed and properly evaluated:

COMPANY NAME: _____ Osprey Initiative LLC _____

NUMBER OF YEARS IN BUSINESS: _____ 7 _____ HOW LONG IN PRESENT LOCATION: _____ 5 _____

TOTAL NUMBER OF CURRENT EMPLOYEES: _____ 13 _____ FULL TIME _____ 20 _____ PART TIME _____

NUMBER OF EMPLOYEES PLANNED FOR THIS CONTRACT: _____ 4 _____ FULL TIME _____ 4 _____ PART TIME _____

PLEASE LIST FOUR (4) REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED CONTRACT SERVICES FOR WITHIN THE PAST FIVE (5) YEARS (All fields must be completed):

1. _____ City of Mobile _____ current client _____
COMPANY NAME

_____ Mobile, AL 36606 _____
CITY, STATE, ZIP

_____ Rosemary Ginn _____
CONTACT PERSON

_____ 251-208-7967 _____
TELEPHONE

_____ N/A _____
FAX NUMBER

_____ rosemary@cityofmobile.org _____
E-MAIL ADDRESS

2. _____ City of Birmingham _____ current client _____
COMPANY NAME

_____ Birmingham AL 35005 _____
CITY, STATE, ZIP

_____ Direcus Cooper _____
CONTACT PERSON

_____ 205-502-4701 _____
TELEPHONE

_____ N/A _____
FAX NUMBER

_____ direcus.cooper@birminghamal.gov _____
E-MAIL ADDRESS

3. _____ Louisiana State University Agricultural Center _____
COMPANY NAME

_____ Baton Rouge, LA 70802 _____
CITY, STATE, ZIP

_____ Jeff Kuehny _____
CONTACT PERSON

_____ 225-578-8654 _____
TELEPHONE

_____ N/A _____
FAX NUMBER

_____ jkuehny@agcenter.lsu.edu _____
E-MAIL ADDRESS

4. _____ Pontchartrain Conservancy _____ current client _____
COMPANY NAME

_____ New Orleans, LA 70009 _____
CITY, STATE, ZIP

_____ Kristi Trail _____
CONTACT PERSON

_____ 504-836-2215 _____
TELEPHONE

_____ N/A _____
FAX NUMBER

_____ kristi@sciencefourcoast.org _____
E-MAIL ADDRESS

1. All proposers shall provide method of performing work under this contract. If applicable, provide an itemized list of equipment to be used, including manufacturer and model numbers (attach additional pages if necessary):

Please see the scope of work section for additional information on methods and activities

The specialized equipment that may be used on this project includes Litter Gitters and Litter Boom. More information about each of these devices is available in the Additional Information section with photographs and specifications for each item.

2. All proposers shall provide a description of all safety measures to be followed while performing work under this contract.

Osprey adheres to all applicable federal, state, and local regulations related to workforce safety. Additionally, the company has a strict set of internal safety standards and protocols. All field activities have their own standard operating procedure (SOP), and field teams perform daily on-site "Safety Check and Briefing" discussions with staff. The company contracts external companies for annual safety inspections of the office and project site visits to ensure quality control. All staff are trained in a comprehensive online job safety curriculum and full-time staff receive First Aid and CPR training as well.

The SOPs for Tactical Cleanups and Litter Collection Device Cleanouts have been included in the additional documents section, along with the Dangerous Materials SOP. These documents provide details about the level of safety that Osprey teams maintain in the field when working in or near waterways. If requested, Osprey is happy to provide additional documentation such as our Health and Safety Plan (HASP) or SOPs related to other activities

The City of Fayetteville intends on awarding to one Proposer; however, the City reserves the right to award based on the best interest of the City, based on the Selection Criteria presented in this RFP.

Scope of work shall include ALL Waterways as described in this RFP, including Appendix Document (GIS map as visual). Price proposed shall be inclusive of all areas described for all work described in the Scope of Work. Price proposed shall be listed for entire Contract duration of five (5) years. Proposer shall list any anticipated increases in cost.

NAME OF COMPANY: Osprey Initiative, LLC.

LUMP SUM COST PROPOSED: \$786,560.00 for 5 years. Please refer to full cost estimate for details

Additional services shall be presented in the form of hourly rates along with a description and documentation of other services that may be provided within this proposal. Rates shall include necessary equipment, tools, and labor. Proposal may also include a percent markup on any item the City may purchase for use through the Contractor.

1. Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.
2. Mark up % on materials purchased for the City (____ %). Documentation shall be provided with each quote and approved prior to purchase. Any approved materials and quantities shall be verified with supporting documentation when invoices are submitted to the City. The City reserves the right to procure materials and supplies through businesses other than selected vendors, if it is in the best interest of the City.

ADDITIONAL PROPOSED SERVICES/PRODUCTS:

Proposer shall submit additional services for offering by completing the form below or may attach hourly rates and documentation of other services that may be provided within this proposal.

1. Description of Service: Additional services available upon request
Hourly Rate: Variable
2. Description of Service: _____
Hourly Rate: _____
3. Description of Service: _____
Hourly Rate: _____
4. Additional Capture Devices (cost per device): _____

COST ESTIMATE
P24-036 - Year One
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	120 hrs @	\$150.00 /hr	\$18,000.00
Senior Project Manager	328 hrs @	\$120.00 /hr	\$39,360.00
Senior Field Lead	328 hrs @	\$75.00 /hr	\$24,600.00
Field Tech	1312 hrs @	\$50.00 /hr	\$65,600.00
Field Supplies	1 est @	\$1,000.00 /est	\$1,000.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	9800 miles @	\$1.00 /mile	\$9,800.00
Meals	41 days @	\$300.00 /day	\$12,300.00
Hotels	32 nights @	\$600.00 /night	\$19,200.00
			\$190,860.00

Task 2 - Device Location Recommendations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$13,200.00

Task 3 - Device Delivery/Installation

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Project Manager	40 hrs @	\$90.00 /hr	\$3,600.00
Senior Field Lead	40 hrs @	\$75.00 /hr	\$3,000.00
Field Tech	40 hrs @	\$50.00 /hr	\$2,000.00
Field Supplies	1 est @	\$1,000.00 /est	\$1,000.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$200.00 /day	\$800.00
Hotels	3 nights @	\$400.00 /night	\$1,200.00
			\$19,000.00

Task 4 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 5 - Coordinating/Management/Reporting

Executive Project Manager	56 hrs @	\$150.00 /hr	\$8,400.00
Senior Project Manager	56 hrs @	\$120.00 /hr	\$6,720.00
Admin	40 hrs @	\$60.00 /hr	\$2,400.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$19,920.00

Year 1 Total: \$242,980.00

Does not include Task 4: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Two
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	80 hrs @	\$150.00 /hr	\$12,000.00
Senior Project Manager	240 hrs @	\$120.00 /hr	\$28,800.00
Senior Field Lead	240 hrs @	\$75.00 /hr	\$18,000.00
Field Tech	960 hrs @	\$50.00 /hr	\$48,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	30 days @	\$300.00 /day	\$9,000.00
Hotels	25 nights @	\$600.00 /night	\$15,000.00
			\$139,300.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$15,120.00

Year 2 Total: \$154,420.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Three
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$15,120.00

Year 3 Total: \$128,120.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Four
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	40 hrs @	\$120.00 /hr	\$4,800.00
Admin	32 hrs @	\$60.00 /hr	\$1,920.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$15,120.00

Year 4 Total: \$128,120.00

Does not include Task 2: 12 Month Maintenance Agreement

COST ESTIMATE
P24-036 - Year Five
RFP 24-04 Waterway Cleanup Services
Fayetteville, AR

Task 1 - Tactical Cleanups of 10 Priority Locations

Executive Project Manager	40 hrs @	\$150.00 /hr	\$6,000.00
Senior Project Manager	200 hrs @	\$120.00 /hr	\$24,000.00
Senior Field Lead	200 hrs @	\$75.00 /hr	\$15,000.00
Field Tech	800 hrs @	\$50.00 /hr	\$40,000.00
Field Supplies	1 est @	\$500.00 /est	\$500.00
Canoe/Kayak x 2	10 days @	\$100.00 /day	\$1,000.00
Mileage	7000 miles @	\$1.00 /mile	\$7,000.00
Meals	25 days @	\$300.00 /day	\$7,500.00
Hotels	20 nights @	\$600.00 /night	\$12,000.00
			\$113,000.00

Task 2 - 12 Month Maintenance Agreement

Each cost shown below is per device.

Litter Boom	12 months @	\$2,100.00 /month	\$25,200.00
Litter Gitter	12 months @	\$2,500.00 /month	\$30,000.00 To be Determined

Task 3 - Coordinating/Management/Reporting

Executive Project Manager	56 hrs @	\$150.00 /hr	\$8,400.00
Senior Project Manager	56 hrs @	\$120.00 /hr	\$6,720.00
Admin	40 hrs @	\$60.00 /hr	\$2,400.00
Mileage	1400 miles @	\$1.00 /mile	\$1,400.00
Meals	4 days @	\$100.00 /day	\$400.00
Hotels	3 nights @	\$200.00 /night	\$600.00
			\$19,920.00

Year 5 Total: \$132,920.00

Does not include Task 2: 12 Month Maintenance Agreement



Osprey LCD (Litter Collection Device) Cleanout SOP (Standard Operating Procedure)

General Notes

- Osprey Litter Collection Device Cleanout – The removal and sorting of all trash items from a Boom or Litter Gitter site. A site is defined as the trap system and surrounding area (typically 50 yards upstream and downstream of the trap system).
- Osprey Litter Collection Device Deep Clean – The removal and sorting of all trash items within 100 yards of the trap system, upstream and downstream. To be performed quarterly.
- At a minimum, each site will be checked and serviced every two weeks. Additionally, crew members will be on call for major rain events, or if repairs are required.
- Field crews will maintain two-person teams, in adherence to safe work protocols.
- If the site does not require cleaning, the field crew will complete and submit *Litter Collection Device Cleanout Form* for project records. If the site is cleaned, the field crew will complete and submit *Litter Collection Device Clean Out Form* and *Osprey Escaped Trash Assessment Program (ETAP) Data Card*. Forms should be uploaded to SharePoint by 11:59 pm EST on Sunday of each week.
- If material collected is less than two 30-gal trash bags, field crews will complete ETAP on all material. However, if the collected material exceeds two 30-gal trash bags, field crews will complete ETAP on 10% of a representative sampling of the total material.

Required Equipment

Common to All:

- Trash Pickers: 1 per crew member + 1 spare
- Tubs: 3-4 per crew
- Hanging Scale: 1 per crew
- Trash bags: several
- Clipboard w/ forms: 1 per crew
- Pen(s)/Pencil(s): several
- Field Crew Pack: 1 per crew
 - Med Kit
 - Multi-tool
 - Repair Items (Zipties, paracord, shackles, duct tape, etc.)

Site Dependent:

- Waders: 1-2 per crew
- Canoe/Kayak/Pirogue: 1 per crew (if required)
- PFDs: 1 per crew member
- Hip Boots: 1 set per crew member



Planning and Preparation

- Weekly work schedule published and communicated to field crew and project supervisor by crew lead based on weather forecast, routine Boom service schedule, and crew member availability.
- Previous forms reviewed to ensure any remarks regarding required follow-up actions are incorporated into the work plan. Safety plans should be reviewed and updated (if required) on a quarterly basis as a refresher.
- Gear/equipment prep conducted night prior to workday. Task completed or assigned by crew lead.

Field Operations

- When first arriving at the site, take time to complete a *Safety Check and Briefing*.
- Examine the site for changes and get your bearings. Ensure appropriate safety measures are implemented.
- Crew will gear up with specified PPE (Personal Protective Equipment).
 - Hip boots are standard footwear for most field activities.
 - Life jackets shall be worn anytime a crew member is working in a waterway without visual supervision from another crew member, when the water is deeper than twelve (12) inches, or when crew members are on a boat/watercraft
- Following safety check, commence Litter Collection Device Clean Out.
 - Use the pickers to collect all trash items in tubs.
 - Clear collection device of vegetation. Do not collect vegetation with trash (unless required for project objectives).
- After clearing litter collection device of all trash items and vegetation, perform a check of trap condition and function. Adjust Boom, if necessary, for optimal performance. If damaged, repair (if able). Document damage that cannot be repaired in the field to report to Project Supervisor.
- Once out of the water, perform ETAP (see the *Osprey ETAP SOP* for guidelines) and complete the *Osprey ETAP Data Card*.
- If ETAP is to be performed later, proceed with separating and bagging recyclables and disposables. Ensure bags are clearly labeled with site name and date. Recommend using duct tape and Sharpie marker.
- Recyclables are determined based on project requirements and local recycling center guidelines by both material and condition. Typically, for items to be considered recyclable, they must be an acceptable material in good condition, such as intact/un-fouled aluminum and #1 plastics. When uncertain, field crews should consult with the project supervisor.
- Once all materials have been separated, complete the *Litter Collection Device Clean Out Form* to document weight and volume for both recyclables and disposables.
- Follow the *Osprey Dangerous Materials SOP* when handling hazardous items.



- So long as it is safe and in accordance with the aforementioned SOP, trash items should be drained of water/fluid and vegetation removed to avoid skewing weight.
- Debris is anything other than floating litter that is caught in a Litter Collection Device. This includes, but is not limited to, vegetation or wood. Items that are too large to fit into the 30-gallon trash bags should also be labeled as debris. This may include tires, appliances, large car parts, and shopping carts. These items should be noted in the debris section of the *Litter Collection Device Clean Out Form* and weighed separately.
- Use the hanging scale to weigh each bag and total the weights by respective category of recyclables and disposables.
- Volumes are estimated based on amount of material in a tub – plastic tubs have a full volume of 2.5 cubic feet [Champagne baskets have a full volume of 1.75 cubic feet]
- Prior to departing the site, the crew lead completes final confirmation that the forms are fully filled out.
- Materials will be properly loaded and tied down. They will then be hauled away and taken to an approved storage/ disposal site.

Post Op

- Periodic quality checks will be conducted by the project supervisor to ensure consistency in the application of ETAP data collection. Once the quality check has been completed, recyclables and disposables can be properly sorted into respective bins for subsequent disposal.
- Crew lead will provide a monthly update on Litter Collection Device sites to the project supervisor. All completed forms (hard copies) must be submitted by the crew lead to the project supervisor NLT 4:00 pm on Friday of each week.
- Crew leads should conduct a weekly inventory of all equipment and gear and inform the project supervisor of any that are broken/damaged or missing (stolen/lost). Crew lead should ensure adherence to routine maintenance schedules for specific equipment (see related SOPs for specific equipment).
- Crew leads should complete quarterly gear inspections for traps and cleanout tools.

Attached are a blank *Osprey Litter Collection Device Clean Out Form* with commentary for reference.



Litter Collection Device Clean Out Form

ID:	Date:
City:	Worker:
County:	
State:	Company:

Arrive	Depart	Total Time
--------	--------	------------

	Bags	Primary	Debris
Recyclables		lbs ft ³	
Trash		lbs ft ³	
Totals		lbs ft ³	

Debris Details:

Site Conditions:

Follow-up Required - Y or N

Observations:

Device Condition:

Comments:

Provide information about the type of debris encountered. One obvious source? More than usual?

General observation of the area. Score for both upstream and downstream litter. Comparison of legacy vs. new litter. Particular areas that require follow up. Before and after site pictures.

Pertinent information for follow up crews. Such as dangerous conditions, aggressive animals or people, unstable banks, or other hazards. This is also the spot for weather conditions.

Do a full assessment of the device each time. Describe what needs to be repaired/modified. Outline plan to improve functionality.

Provide information for leadership consideration here. What follow ups are needed? What improvements can be made? What specific equipment/resources will be need to make this happen? Be concise.

Figure 1 - Litter Collection Clean Out Form template w/ comments



Osprey Tactical Cleanup SOP (Standard Operating Procedure)

General Notes

- Tactical Cleanups are site-specific focused efforts to remove litter from a selected location using highly trained Osprey staff. In this way, a Tactical Cleanup is different from a community-based volunteer event or other cleanup activities with inexperienced personnel.
- Tactical Cleanups include the deployment of field crew and litter abatement tools and equipment at the selected site.
- Collection methods may include, but are not limited to, collection from powerboats, non-motorized watercrafts, all-terrain vehicles, or on foot.
- Minimum of two-person crews, using the buddy system and a high level of communication between crews.
- ETAP Data Cards and other recordkeeping will be completed in accordance with project guidelines. (See *Osprey ETAP SOP* and *Osprey ETAP Field Reference Guide*)

Site Selection

- Crew leaders will assess the Tactical Cleanup location for litter hot spots, safety issues, and environmental considerations
- Crew leaders will utilize existing Zone Maps and document the boundaries and sections being addressed
- Leaders will assign crew tasks based on available skills, comfort, and site conditions
- Crew will source additional equipment, as needed, based on site conditions
- Crew will observe weather predictions for the site and adjust plans as needed if weather hazards are projected.

Required Equipment

Common to All:

- Trash Pickers: 1 per crew member + 1 spare
- Tubs: 3-4 per crew
- Hanging Scale: 1 per crew
- Trash bags: several
- Clipboard w/ forms: 1 per crew
- Pen(s)/Pencil(s): several
- Field Crew Pack: 1 per crew
- Med Kit
- Multi-tool

Site Dependent:

- Waders: 1-2 per crew
- Canoe/Kayak/Pirogue: 1 per crew (if required)
- PFDs: 1 per crew member
- Hip Boots: 1 set per crew member



Field Operations

Crew Assembly/ Loading Equipment

- Crew will load trailer with all potential gear needed for litter collection during Tactical Cleanups (daily field checklist)
- Trained crew members will hook up truck to equipment trailer or boat trailer. (Refer to *Osprey Vehicle and Trailer SOP*)
- First few people at shop begin loading gear in truck(s) as per daily plan
- Gear and equipment will be loaded safely, utilizing team carry for oversized and heavy objects
- Crew will check that all tools, supplies, and bags are secured in truck beds and trailers
- Before departure, the crew leader will ensure that all participants are accounted for and know the project site location, directions, and expectations while on site

Transit/ Unloading

- Crew will obey all traffic laws, paying special attention while maneuvering trailers
- Crew will park trucks and trailers in safe locations that do not interfere with traffic.
- Emergency hazard lights will be used if trucks must temporarily block traffic for unloading
- Crew will utilize safe lifting techniques while unloading equipment and boats
- Tools and equipment will be unloaded into an area where they can be supervised and easy to locate.

At-Site/ Deployment

- Crew leader will present the Safety Check (See *Osprey Safety Check and Briefing*)
- Crew will gear up with specified PPE (Personal Protective Equipment).
 - Hip boots are standard footwear for most field activities.
 - Life jackets shall be worn anytime a crew member is working in a waterway without visual supervision from another crew member, when the water is deeper than twelve (12) inches, or when crew members are on a boat/watercraft
- Crew will unload canoes or launch boats in approved locations
- Crew members familiar with principles of launching canoe will facilitate deployment. These principles include:
 - Looking for the safest spot to deploy with the least amount of carrying a canoe or vessel to the water's edge.
 - A gradual drop or sandy embankment that creates a shallow spot to get in, an area with little vertical drop off between the bank and the canoe.
 - One person will hold the canoe while the other is boarding.
 - Moving with three points of contact, using a paddle to brace across each side of the canoe and keeping weight in the center of the boat.

Litter and Debris Collection

- Collection and sorting of litter and recycling in the field will generally utilize a rope-handle tub for litter, and a slotted fish basket (Champagne) for recycling.
- Osprey is currently sorting intact and partially degraded aluminum cans, and (#1) plastic bottles.



- Further sorting in the field can be achieved per site, type of litter (such as an excess of unbroken glass bottles), or client/project basis and will be discussed prior to Tactical Cleanup.
- Tubs of litter will be dumped into 30-gallon garbage bags and sorted recycling into Osprey recycling bags.
- To empty a tub or Champagne – Start with the tub or Champagne on the ground. Place the open end of a garbage or recycling bag, respectively, around the lip of the tub that is facing you, and over the handles of the tub. Keeping the empty bag wrapped around the lip and handles, pick up the tub or champagne at the lip and tilt the collected litter inside the bag. Exposure to collected litter is minimized when using this method.
 - Orient the tub or Champagne so that the rope handles are on the sides and the litter or recycling will not be dumping out over one of the handles
- Staging litter as you work: Place bags on bank during collection and crew works downstream, carrying bags of litter along the trail that was used as primary entrance or walkway.
- Debris is anything other than regular litter. This includes, but is not limited to, vegetation or wood. Items that are too large to fit into the 30-gallon trash bags, or weigh more than 5-10 pounds, should also be labeled as debris. This may include tires, appliances, large car parts, and shopping carts.
- Avoid collecting broken glass in trash bags due to risk of injury while handling litter/bags during staging and transport. Broken glass becomes dangerous for crew members.
- Refer to *Osprey Dangerous Items SOP* for information on how to handle sharps/needles, Hazmat, and unsanitary or contaminated litter (diapers, personal hygiene, etc.)
- Once all materials have been separated, complete the *Tactical Cleanup Data Collection Form* to document weight and volume for both recyclables and disposables.
- Follow the *Osprey Dangerous Materials SOP* when handling hazardous items.
- So long as it is safe and in accordance with the aforementioned SOP, trash items should be drained of water/fluid and vegetation removed to avoid skewing weight.
- Sizeable items should be noted in the debris section of the *Tactical Cleanup Data Collection Form* and weighed separately.
- Use the hanging scale to weigh each bag and total the weights by respective category of recyclables and disposables.
- Volumes are estimated based on amount of material in a tub – plastic tubs have a full volume of 2.5 cubic feet [Champagne baskets have a full volume of 1.75 cubic feet]

Communication/ Teamwork

- Utilize Line of Sight (Visual) / Verbal / Cellular - Utilize all three as overlapping tools to maintain communication.
- Leap Frog Collection: Utilized when the entire crew is working one bank. Team A begins at one location and works the entire section, moving towards Team B. Team B starts at a point further down the bank, and begins working away from Team A. Once Team A reaches the point where Team B started their section, Team A “jumps” past where Team B is currently working and begins a new section.
- Per Bank Collection: Each team takes one side of the waterway (one team per bank). Teams may go the same direction or opposite directions, depending on resources.
- Power Boat Application: Powerboats will be utilized to access areas unreachable by land and to deposit crew members on the shoreline. Powerboat operators must have their state-appropriate boater’s license and should review the *Osprey Power Boat Operation SOP*.



- Pick-up area, relocating or spreading out crew members as needed, based on location of escaped litter.
- Crew will identify and communicate hazards:
 - When walking single-file, crew will relay a hole or possible misstep to the person(s) behind them,
 - When carrying items in front of them (limiting visibility to ground), crew members will help guide one another.
 - Crew will maintain a high level of spatial awareness and accountability between not only crew leaders and crew members but also crew member to crew member.
 -

Processing Data of Tactical Clean- Up

- Crew will complete a *Tactical Cleanup Data Collection Form*. This document contains: Site, location, crew, time at site, weights and cubic footage collected of recycling and litter respectively, site conditions, and if a follow up visit will be needed. ETAP will be completed using the *Escaped Trash Data Card*. - One crew member will record while one to two crew members sort and vocalize brands and level of degradation. In order of: Brands (listed as multiple quantities to least), Number of intact, partially degraded, and degraded items (from intact to degraded)
- Crew will record weight and cubic footage of litter as loaded onto truck or trailer. This process will be repeated for recycling

Departure

- Crew will load collected litter from staging area to extraction site (trailer) using safe lifting techniques and relaying potential hazards
- Crew will collect and inventory all gear used (paddles, vests, tubs, champagnes, canoes). Notes will be made of any missing or damaged equipment
- Crew will safely load canoes onto trailer from the waterway, paying attention to any traffic or road safety issues
- Prior to departure from the site, crew will ensure that all items in the truck bed and trailer are properly secured

Osprey Dangerous Materials SOP

During the course of Litter Collection Device Cleanouts, Tactical Cleanups, and other field activities Osprey staff may come across materials that fall outside normal handling procedure. These items could be biohazards, illegal drugs, weapons, or general HAZMAT. This document describes the safe handling practices for each type of item. If Osprey employees encounter a dangerous item while in the field that does not fall into the categories on this list, they will proceed with “common sense” safety considerations, or contact their supervisor for guidance. Osprey will then add the item to this document with an agreed-upon set of instructions.

Biohazards: Any biological or chemical substance that is dangerous to humans, animals, or the environment. This includes human waste, blood, urine, vomit, or animal remains.

- **Human Waste/Fluids** are often in the form of used diapers, condoms, and menstruation products. These items may be collected using trash grabbers if appropriate. If it is not deemed safe to move these items, they may be left in the field.
- **Animal Remains** may include wild animals or domestic pets. Do not touch animal remains unless they directly interfere with Litter Collection Device operations. If the remains have been touched, the crew members involved should safely remove their gloves, disinfect their hands, and procure new gloves.
- **Human Remains** should not be touched, moved, or otherwise altered. Immediately report the situation to law enforcement and clear crew members from the area to preserve site integrity. If the remains have accidentally been moved or altered, document how they were moved and by whom. If the remains have been touched, the crew members involved should safely remove their gloves, disinfect their hands, and procure new gloves.

Illegal Drugs: Any substance that is either illegal to own or requires a prescription to obtain. It is common for crew members to find empty drug baggies, prescription pill bottles, and drug paraphernalia. These may be disposed of with regular litter.

- **Syringes** are the most common dangerous drug related item. Syringes pose both an injury and disease hazard. A crew member should select a bottle with cap from the collected trash, remove the cap, and place it on the ground. The Syringe should be placed inside the plastic bottle using trash grabbers. The bottle should be capped and disposed of with regular trash. Crew members should not attempt to hold the bottle while inserting the syringe. If a crew member has been punctured by a syringe, a supervisor should be informed immediately.
- **Large Quantities of Drugs** include blocks, bricks, or large baggies. Any drug quantities of this size should be documented and reported to the police.

Weapons: Knives, firearms, and any other sharp implements.

- **Small knives** and other hand held “sharps” should be managed the same way that syringes are handled. The item should be placed inside an intact plastic bottle. The bottle should be capped and disposed of with regular trash. If a crew member is cut or punctured by a knife or other sharp, a supervisor should be informed immediately.
- **Large Sharp Items** such as axes, swords, and machetes should be handled with special care taken to avoid injury. The blade or cutting edge should be wrapped in cut resistant material, such as cardboard, and secured before disposal. Additional Steps?

Osprey Dangerous Materials SOP

- **Firearms** should be documented and reported to the police. It is important to note if the gun has been moved or altered in any way from the time it was encountered.

Other HAZMAT: This may include cans of paint, jugs of petrochemicals, Freon, car batteries, fire extinguishers, and propane canisters. If crew members can safely handle these items without risk of contamination or injury, they may remove them from the area. HAZMAT should be disposed of in accordance with local guidelines at an approved facility. Crew members should not empty, puncture, or otherwise alter containers of HAZMAT chemicals. If a crew member ingests or is exposed to a hazardous material, they should notify their supervisor immediately and seek medical attention.

Unknown Liquids: Any bottles that contain unidentifiable liquid should be left closed and disposed of with general trash. Do not attempt to open and drain bottles that contain liquids that you cannot recognize. This includes bottles that have been used for tobacco spit, oil disposal, and urination.

General Rule: When in doubt, stop the activity and contact a supervisor for further direction.

RFP 24-04, Waterway Cleanup Services
Appendix C
Osprey's Proposal

	Item List	Item condition			Item Notes
		Intact/ Un-fouled	Partially Intact/ Partially Fouled	Degraded/ Heavily Fouled	Identifying features: Product, Language, Event, etc.) <i>Please add more info on back of sheet</i>
PAPER	Cardboard				
	Bags				
	Newspaper, Junk Mail and Office Paper				
	Cups				
	Beverage and Food Packaging				
	Receipts				
	Other Paper				
GLASS	Beverage Bottles and Containers				
	Food Packaging				
	Other Glass				
METAL	Beverage Cans and Containers				
	Bottle Caps				
	Food Packaging				
	Other Metal				
PLASTIC	Beverage Bottles and Containers				
	Water Bottles				
	Straws and Stirrers				
	Bottle Caps				
	Cups and Cup Lids				
	Food Wrappers				
	Chip Bags				
	Other Fast Food Service Items				
	Food and Drink Pouches				
	Other Food Packaging				
	Bags/ Film				
	Hard Fragments				
	Other Plastic				
FOAM	Styrofoam Cups				
	Styrofoam Pieces				
	Other Styrofoam Fast Food Items				
OTHER	Cigarettes/Tobacco and Packaging				
	Entertainment Items/ Electronics				
	Fishing Gear/ Rope				
	Textiles and Shoes				
	Toiletries/Personal Hygiene Products				
	Medical Waste				
	Paint and Other Hazardous				
	Bulky Items				
	Vehicle Related				
	Sports Equipment				
	Illegal Dumping - Whole Bags of Trash				
	Write in				



DONALD W. BATES, JR.

651 Olive Ave., Fairhope, AL 36532 · 601 842 7305
don.bates@osprey.world

Mr. Bates has nearly 30 years of experience in the natural science field with over 20 years of management experience.

EXPERIENCE

APRIL 2019 TO CURRENT

OWNER/PRESIDENT, OSPREY INITIATIVE, LLC

- Responsible for all aspects of creating, developing, and managing the company.

FEBRUARY 2001 TO APRIL 2019

EXECUTIVE VICE PRESIDENT, THOMPSON ENGINEERING

Held multiple positions with this company.

- Started a satellite office for Thompson Engineering in Jackson, MS in 2001.
- Rose to the corporate position of Director of Operations
- Ended his career at Thompson Engineering as the Division Leader of the Geotechnical, Environmental, and Materials Division.

1998 TO 2001

PROJECT GEOLOGIST, AQUATERRA

- Managed and performed Environmental Assessments for a wide range of clients throughout the southeastern United States.

1997 TO 1998

FIELD GEOLOGIST, BURNS COOLEY DENNIS

- Managed field logistics and data/sample collection for a buggy mounted drill rig.

DECEMBER 1993 TO 1997

FIELD GEOLOGIST, MISSISSIPPI OFFICE OF GEOLOGY

- Mapped geologic formations of Miocene age.

EDUCATION

B.S. GEOLOGY, MILLSAPS COLLEGE 1992

REGISTRATIONS

REGISTERED PROFESSIONAL GEOLOGIST, MISSISSIPPI #132

ELINOR MALLON

2208 Old Government St. Mobile AL, 36606 · (317) 417-9872

Ellie.mallon@osprey.world

Ellie is a current graduate student with a strong passion for conservation and using data as platform for educating others. She has five years of experience in the natural science field.

EXPERIENCE

JULY 2019 – PRESENT

SENIOR OPERATIONS MANAGER, OSPREY INITIATIVE

- Conduct data management and analysis for all company projects.
- Built and maintained company server through Microsoft Share Point.
- Prepare monthly and quarterly reports for projects summaries, grant deliverables and client inquiries.
- Create various graphical representations of data for sales presentations and promotional material.

SEPT 2017 – JULY 2019

AMERICORPS MEMBER, MOBILE BAYKEEPER

- Performed comprehensive water resource inspections based on past water quality data, reviews of state regulatory files and citizen concerns.
- Researched local, state and federal policy, scientific reports, and environmental concerns for Baykeeper campaigns.
- Managed the Swim Where It's Monitored (SWIM) initiative: conducting weekly monitoring for seven popular swimming sites in the Mobile Bay area, collect and test samples for bacterial contamination and communicate findings to the public via the Swim Guide app.
- Assisted in the development of a coastal version of the EPA's Escaped Trash Assessment Protocol (ETAP) – a process involving multiple field data sheet revisions, standard operating procedure changes and cross organization collaboration.

EDUCATION

MOBILE, AL

B.S. BIOLOGY, SPRING HILL COLLEGE – 2018

TREVOR BESSE

108 SW Central Ave. Amite, Louisiana 70422 • (985)-507-2035 •
trevor.besse@osprey.world

EXPERIENCE

MARCH 2023 – PRESENT

REGIONAL FIELD LEAD, OSPREY INITIATIVE

- Oversee the Louisiana and Texas region operations and deliverables.
- Manage field technicians and ensure safety standards in all daily activities.
- Coordinate with executive staff on project data, budget, and timeline metrics.

FEBRUARY 2021 – JANUARY 2023

SENIOR PROJECT MANAGER, JB GROUP OF LA DBA INFRASTRUCTURE SOLUTIONS GROUP, LLC

- Worked with Owners to startup, build and expand a competitive & profitable Electrical and Instrumentation (E&I) & DOT Electrical Construction Company.
- Consulted with bonding & insurance agents to increase construction project bonding & insurance capacities.
- Consulted with potential clients and contractors for project opportunities

FEBRUARY 2021 – JANUARY 2023

PROJECT MANAGER, DIAMOND ELECTRICAL

- Performed Estimating, Management, & Close-Out processes for various lighting, traffic signal, and ITS Projects.
- Became proficient at Pre-Bidding/Estimating procedures, Material Acquisition, Scheduling, Submittal/Shop-Drawings
- Submissions, Construction Accounting/Budgeting Setup & Tracking, Progress Payments, Unit Price & Lump-Sum
- Contract Execution, Stockpile Material Invoices, Project Layout, RFI's, Change Orders, As-Builts, Opportunity
- Cost-Analysis, Permitting, Building Shut-Downs, Road & Lane Closures, Traffic Logs, One Calls, Electrical Service &
- Account Setups, issuing & managing Subcontracts.

EDUCATION

BATON ROUGE, LA

B.S. CONSTRUCTION MANAGEMENT, LOUISIANA STATE UNIVERSITY – 2017



LITTER GITTER

THE LITTER GITTER IS MORE THAN A CATCHY NAME – IT'S A DEVICE THAT'S CHANGING THE WAY WE TACKLE THE CHALLENGES POSED BY LITTER IN OUR WATERS.



When it rains, stormwater runoff flows into drains and pipes that feed into our creeks and lakes, carrying with it litter and debris. Stormwater runoff is a leading cause of floating trash in our surface waters.

The patented, aluminum Litter Gitter is a tactical in-stream litter collection device that uses booms to direct the flow of water and litter into a trap.

DEVICE MAINTENANCE

The Osprey team handles all aspects of device installation and maintenance through a rental contract with our partners. The Osprey team separates vegetative debris from the litter, and recyclables are separated from other trash and disposed of accordingly. Our local field techs clean them out a minimum of twice per month and after every major rain event.

DATA COLLECTION

The Osprey team also provides detailed data on litter and debris collected. Data is collected using the EPA's Escaped Trash Assessment Protocol (ETAP) tool, a full recommendation on how to gather, sort, and document trash collection.

In delivering this data to our partners, we can help create solutions that stop litter at its source – before it ever makes it to our waterways!



LITTER BOOM

IN PARTNERSHIP WITH THE OIL STOP DIVISION OF AMERICAN POLLUTION CONTROL CORPORATION, Osprey is excited to announce the addition of the Litter Boom to our line of Litter Collection Devices.



THE LITTER BOOM IS A FLOATING BARRIER DESIGNED TO TACTICALLY PREVENT LITTER FROM CONTINUING TO FLOAT DOWNSTREAM.

Our booms are made of enhanced polymer geomembranes, engineered to take on the most challenging environments and applications. This long-lasting material is high-strength, UV resistant, and puncture resistant. All boom components are corrosion resistant, lead and mercury-free, and require little maintenance.

These specialized booms can stretch across waterways or float along embankments. The booms are designed to allow wildlife and kayaks to navigate over or under, creating minimal impact on the surrounding environment. Special kayak/canoe gates are offered.

TAILORED SOLUTION

Installation of the Litter Boom at hot spots or litter accumulation points reduces floating trash, giving your waterways back to the citizens who enjoy them.

Each boom comes in a wide variety of lengths, sizes, and a multitude of deployment options.

Custom Litter Booms are available for purchase with or without a maintenance contract.





LITTER INTERCEPTOR

Osprey is excited to offer a new solution to our line of litter abatement tools:
THE LITTER INTERCEPTOR.



CUSTOMIZED SOLUTION

We design each system to fit within any stormwater inlet and to capture the maximum amount of litter. The Osprey team provides on-site installation assistance for each device.

Custom Litter Interceptors are 100% non-destructive retro fit and are available for purchase with or without a maintenance contract.

INITIALLY DEVELOPED AS THE MARINE DEBRIS INTERCEPTOR (MDI), THIS PROPRIETARY DEVICE IS DESIGNED TO OFFER THE BEST SOLUTION TO CAPTURE PARKING LOT AND ROAD-BASED LITTER IN STORMWATER INLETS.

The Litter Interceptor is a customizable stormwater inlet protection device that is individually fit for any inlet. The device intercepts litter greater than 2.5 inches in diameter, while allowing vegetative debris to pass through.

This is the perfect device to tackle your road-side debris accumulation points and areas where debris and litter tend to accumulate following heavy rain and storm events.

Ideal for urban installations where customized, non-destructive installation is needed.



TACTICAL CLEANUPS

WE LOVE REMOVING LITTER AND DEBRIS FROM OUR WATERWAYS. NO CLEANUP IS TOO BIG OR SMALL FOR THE OSPREY INITIATIVE TEAM TO HANDLE! WHETHER IT'S ON THE BANKS OR IN THE WATER, WE CAN HANDLE IT ALL.

SUSTAINABLE SOLUTIONS TOGETHER

Just as we do with our Litter Gitters, our team sorts and collects data on the items we collect. This helps our partners determine the sources of litter to create plans to stop the litter at the source.

Our goal is to recycle as much of the material as feasible. The Osprey team custom sorts our recyclables so local recyclers can accept our materials. Materials not suitable for recycling are disposed of congruent with local regulations.

OUR APPROACH

We work with partners to clean embankments, ditches, creeks, rivers, and more of litter and other debris. Our methods range from walking in hip boots to canoes/kayaks to shallow draft mud boats to skiffs.

We will customize our work plan to accommodate client requirements. We also provide safety and logistical support to community-based clean-ups.





MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Keith Macedo, IT Director
SUBJECT: **Approve a bid waiver and an agreement with CentralSquare Technologies, LLC to provide software maintenance and support for the City's work order and asset management software.**

RECOMMENDATION:

Staff recommends approving a bid waiver and an agreement with CentralSquare Technologies, LLC to provide software maintenance and support for the City's work order and asset management software.

BACKGROUND:

City Council approved a resolution on June 18, 2019, to purchase Lucity's asset management and work order software for Parks Operations, Water and Sewer, RTC, Airport, Facilities Management, and Transportation. CentralSquare is the parent company of Lucity, which they acquired in January of 2019, prior to Council approval. CentralSquare renamed Lucity to Enterprise Asset Mgmt as part of their acquisition of Lucity. As of June 7, 2021 all of the departments listed above are utilizing Enterprise Asset Mgmt to assist with the tracking and management of operations.

DISCUSSION:

This is a renewal for software maintenance and per state law is exempt from Arkansas procurement policy per A.C.A. § 19-11-203. Due to this staff is requesting a bid waiver to approve the attached agreement for Enterprise Asset Mgmt software to support Parks Operations, Water and Sewer, RTC, Airport, Facilities Management, and Transportation.

BUDGET/STAFF IMPACT:

Funds are available within the Information Technology general fund operating budget software maintenance account. The agreement is subject to a 5% annual increase.

ATTACHMENTS: SRF (#3), CentralSquare Solutions and Support Agreement - Signed (#4)



City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-411

Approve a bid waiver and an agreement with CentralSquare Technologies, LLC to provide software maintenance and support for the City's work order and asset management software.

A RESOLUTION TO AUTHORIZE A ONE YEAR SOLUTIONS AND SUPPORT AGREEMENT WITH CENTRALSQUARE TECHNOLOGIES, LLC. IN THE AMOUNT OF \$27,595.33 TO PROVIDE SOFTWARE MAINTENANCE AND SUPPORT FOR THE CITY'S WORK ORDER AND ASSET MANAGEMENT SOFTWARE WITH AUTOMATIC RENEWALS SUBJECT TO A 5% PRICE INCREASE EACH YEAR

WHEREAS, software maintenance is exempt from competitive bidding pursuant to A.C.A. § 19-11-203 (14)(AA).

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 authorizes Mayor Jordan to sign a one year solutions and support agreement with CentralSquare Technologies, LLC in the amount of \$27,595.33 to provide software maintenance and support for the City's work order and asset management software, with automatic renewals subject to a 5% price increase each year.

City of Fayetteville Staff Review Form

2024-411

Item ID

8/20/2024

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

Keith Macedo

7/31/2024

INFORMATION TECHNOLOGY (170)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve a bid waiver and an agreement with CentralSquare Technologies, LLC to provide software maintenance and support for the City's work order and asset management software.

Budget Impact:

1010.170.1710-5416.00

General Fund

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 492,900.00

Expenses (Actual+Encum)

\$ 324,475.68

Available Budget

\$ 168,424.32

Does item have a direct cost? Yes

Item Cost

\$ 27,595.33

Is a Budget Adjustment attached? No

Budget Adjustment

\$ -

Remaining Budget

\$ 140,828.99

V20221130

Purchase Order Number:

Previous Ordinance or Resolution # 143-19

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

CentralSquare Solutions and Support Agreement

This CentralSquare Solutions and Support Agreement (the "**Agreement**"), effective as of the latest date shown on the signature block below (the "**Effective Date**"), is entered into between **CentralSquare Technologies, LLC** with its principal place of business in Lake Mary, FL ("**CentralSquare**") and **City of Fayetteville, AR** ("**Customer**"), together with CentralSquare, the "**Parties**", and each, a "**Party**".

WHEREAS, CentralSquare licenses and gives access to certain software applications ("**Solutions**") to its customers and also provides maintenance, support, migration, installation and other professional services; and

WHEREAS, This Agreement and its Addenda or Amendment(s) represent the entire agreement between the Parties hereto and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written agreements, oral agreements, representations, understandings or negotiations with respect to the matters covered by this Agreement; and

WHEREAS, Customer desires to license and/or gain access to certain Solutions and receive professional services described herein, and CentralSquare desires to grant and provide Customer license and access to such offerings as well as to provide support and maintenance, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by the signatures of their duly authorized representative below, the Parties intending to be legally bound, agree to all of the following provisions and exhibits of this Agreement:

CentralSquare Technologies, LLC	City of Fayetteville
1000 Business Center Drive Lake Mary, FL 32746	113 West Mountain Street, Fayetteville, AR , 72701
By: DocuSigned by: Ron A. Anderson DOE45FA2938A4EB...	By:
Print Name: Ron A. Anderson	Print Name: Lioneld Jordan
Print Title: Chief Sales Officer	Print Title: Mayor
Date Signed: 7/31/2024	Date Signed:

Solution: Enterprise Asset Mgmt

Term.

Initial Term. The Initial Term of this Agreement commences as of the Effective Date and will continue in effect for one (1) year(s) from such date unless terminated earlier pursuant to any of the Agreement’s express provisions (the “**Initial Term**”).

Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement’s provisions (a “**Renewal Term**” and, collectively, with the Initial Term, the “**Term**”).

Non-Renewal. Either Party may elect to end renewal of the Agreement by issuing a notice of non-renewal, in writing, to the other Party three (3) months prior to the expiration of the Agreement term.

Fees.

In consideration of the rights and services granted by CentralSquare to Customer under this Agreement, Customer shall make payments to CentralSquare pursuant to the amounts and payment terms outlined in Exhibit 1 (the Solution(s) Support and Maintenance Fees).

All invoices shall be billed and paid in U.S. dollars (USD) and in accordance with the terms set forth in Exhibit 1. If Customer delays an invoice payment for any reason, Customer shall promptly notify CentralSquare in writing the reasons for such delay. Unless otherwise agreed by both Parties, CentralSquare may apply any payment received to any delinquent amount outstanding.

Standard Terms and Conditions

1. **Definitions.** Capitalized terms not otherwise defined in this Agreement have the meanings set forth below:

- 1.1. **"Affiliate"** means any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Entity.
- 1.2. **"Authorized User"** means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Solutions pursuant to this Agreement, and for whom access to the Solutions has been purchased.
- 1.3. **"Baseline Solution"** means the version of a Solution updated from time to time pursuant to CentralSquare's warranty services and maintenance, but without any other modification.
- 1.4. **"CentralSquare Systems"** means the information technology infrastructure used by or on behalf of CentralSquare to deliver the Solutions, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by CentralSquare or through the use of third-party services.
- 1.5. **"Customer Data"** means information, data, and content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly from Customer, an Authorized User or end-users by or through the Solutions, provided the data is not personally identifiable and not identifiable to Customer.
- 1.6. **"Customer Systems"** means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated by Customer or through the third-party services.
- 1.7. **"Defect"** means a material deviation between the Baseline Solution and its Documentation, for which Customer has given CentralSquare sufficient information to enable CentralSquare to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under CentralSquare's control. Further, with regard to any custom modification, Defect means a material deviation between the custom modification and the CentralSquare generated specification and Documentation for such custom modification, and for which Defect Customer has given CentralSquare sufficient information to enable CentralSquare to replicate the deviation on a computer configuration that is both comparable to the Customer Systems and that is under CentralSquare's control.
- 1.8. **"Delivery"** means:
 - 1.8.1. For on-premise Solutions, Delivery shall be when CentralSquare delivers to Customer the initial copies of the Solutions outlined in Exhibit 1 by whichever the following applies and occurs first (a) electronic delivery, by posting it on CentralSquare's network for downloading, or similar suitable electronic file transfer method, or (b) physical shipment, such as on a disc or other suitable media transfer method, or (c) installation, or (d) delivery of managed services server. Physical shipment is on FOB - CentralSquare's shipping point, and electronic delivery is at the time CentralSquare provides Customer with access to download the Solutions.
 - 1.8.2. For cloud-based Solutions Delivery shall be whichever the following applies and occurs first when Authorized Users have (a) received log-in access to the Solution or any module of the Solution or (b) received access to the Solution via a URL.
- 1.9. **"Documentation"** means any manuals, instructions, or other documents or materials that CentralSquare provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Solution(s), including any aspect of its installation, configuration, integration, operation, use, support, or maintenance.
- 1.10. **"End User Training"** means the process of educating general users of the Software on the operation of the Software.
- 1.11. **"Entity"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other organization.
- 1.12. **"Hardware"** means any equipment, computer systems, servers, storage devices, peripherals, and any other tangible assets purchased under this Agreement.
- 1.13. **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.14. **"Managed Services Hardware"** means any equipment, computer systems, servers, peripherals, and any other tangible asset purchased as a subscription under this Agreement.
- 1.15. **"Maintenance"** means optimization, error correction, modifications, and Updates (defined herein) to CentralSquare Solutions to correct any known Defects and improve performance. Maintenance will be provided for each Solution, the hours and details of which are described in Exhibit 2 (Maintenance and Support)

- 1.16. **"New or Major Releases"** means new versions of a Baseline Solution (e.g., version 4.0, 5.0 etc.) not provided as part of Maintenance.
- 1.17. **"Personal Information"** means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "Personal Data" as defined in the EU General Data Protection Regulation (GDPR 2018), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, and all rules and regulations issued under any of the foregoing.
- 1.18. **"Professional Services"** means configuration, installation, implementation, development work, training or consulting services including custom modification programming, support relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by CentralSquare.
- 1.19. **"Project Kickoff"** is a meeting to occur shortly after contract execution between CentralSquare and Customer in which goals and objectives are set forth, all parties relevant team members are identified, and scope, timelines, and milestones are reviewed.
- 1.20. **"Reliability Period"** is the time period in which the Software is tested and confirmed reliable by successfully completed fifteen (15) continuous days in a live environment with no repeatable Priority 1 or Priority 2 issues as defined in Exhibit 2, unless otherwise agreed in a statement of work.
- 1.21. **"Software"** means the software program(s) (in object code format only) identified on Exhibit 1 (Solution(s) Support and Maintenance Fees). The term "Software" excludes any Third-Party Software.
- 1.22. **"Software Version"** means the base or core version of the Solution Software that contains significant new features and significant fixes and is available to the Customer. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d. An example of which would be 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 3 refers to a fix.
- 1.23. **"Solutions"** means the software, Documentation, development work, CentralSquare Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, provided or used by CentralSquare or any Subcontractor in connection with Professional Services or Support Services rendered under this Agreement.
- 1.24. **"Support Services"** means Maintenance, Enhancements, implementation of New Releases, and general support efforts to respond to incidents reported by Customer in accordance with Exhibit 2 (Maintenance & Support) and Exhibit 7 (Managed Services Provisions), if applicable.
- 1.25. **"Third-Party Materials"** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, related services, equipment, or components of or relating to the Solutions that are not proprietary to CentralSquare.

2. License, Access, and Title.

- 2.1. License Grant. For any Solution designated as a "license" on Exhibit 1, Customer is granted a perpetual (unless terminated as provided herein), nontransferable, nonexclusive right and license to use the Software for Customer's own internal use for the applications described in the Statement of Work, in the applicable environment (e.g., production, test, training, or disaster recovery system) and in the quantity set forth in Exhibit
- 2.2. Additional software licenses purchased after the execution of this Agreement shall also be licensed in accordance with the provisions of this section. Customer shall not use, copy, rent, lease, sell, sublicense, modify, create derivative works from/of, or transfer any software, or permit others to do said acts, except as provided in this Agreement. Any such unauthorized use shall be void and may result in immediate and automatic termination of the applicable license. In such event, Customer shall not be entitled to a refund of any license fees paid. Notwithstanding, Customer shall be entitled to use software at the applicable designated location for the purpose of the application(s) described in the Statement of Work to provide services for itself and other Affiliate governmental agencies/entities, provided that the Software is installed and operated at only one physical location. The Software license granted in this Agreement or in connection with it are for object code only and do not include a license or any rights to source code whatsoever.
- 2.3. Access Grant. For any Solution designated as a "subscription" on Exhibit 1, so long as subscription fees are paid and current, (unless terminated as provided herein), Customer is granted a nontransferable, nonexclusive right to use the software for the Customer's own internal use for the applications described in the Statement of Work, in the applicable environment (e.g., production, test, training, or disaster recovery system) and in the quantity set forth in Exhibit 1. Additional CentralSquare software subscriptions purchased after the execution of this Agreement shall also be accessed in accordance with the provisions of this section. Customer shall not use, copy, rent, lease, sell, sublicense, modify, create derivative works from/of, or transfer any software, or permit others to do said acts, except as provided in this Agreement. Any such unauthorized use shall be void and may result in immediate and automatic termination of the applicable access. In such event, Customer shall not be entitled to a refund of any subscription fees paid. Notwithstanding, Customer shall be entitled to use software at

the applicable designated location for the purpose of the application(s) described in the Statement of Work to provide services for itself and other Affiliate governmental agencies/entities. The subscription access granted in this Agreement or in connection with it are for object code only and do not include a license or any rights to source code whatsoever.

- 2.4. Application Programming Interface "API". If the Customer has purchased any Application Programming Interface (API) license or subscription, Customer may use such API for Customer's own internal use to develop interfaces which enable interfacing with the applicable CentralSquare Software purchased herein. The development and use of such interfacing applications is specifically permitted under the use granted herein and shall not be deemed derivative works provided that they are not, in fact, derived from the CentralSquare Software or the ideas, methods of operation, processes, technology or know-how implemented therein. Other than the usage rights granted herein, Customer shall not acquire any right, title or interest in the CentralSquare Software or API by virtue of the interfacing of such applications, whether as joint owner, or otherwise. Should Customer desire to provide or share the API to a third-party, the third-party must enter into an API Access Agreement by and between the third-party and CentralSquare directly to govern the usage rights and restrictions of the applicable API.
- 2.5. Documentation License. CentralSquare hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Solutions.
- 2.6. Hardware. Subject to the terms and conditions of this Agreement, CentralSquare agrees to deliver, through hardware vendors, the Hardware itemized on Exhibit 1. The risk of loss or damage will pass to Customer upon the date of delivery to the Customer specified facility. Upon delivery and full satisfaction of the Hardware payment obligations, Hardware shall be deemed accepted and Customer will acquire good and clear title to Hardware. All Hardware manufacturer warranties will be passed through to Customer. CentralSquare expressly disclaims, and Customer hereby expressly waives all other Hardware warranties, express or implied, without limitation, warranties of merchantability and fitness for a particular purpose.
- 2.7. Managed Services Hardware. Subject to the terms and conditions of this Agreement, CentralSquare agrees to deliver the Managed Services Hardware itemized on Exhibit 1. So long as the applicable subscription fees are paid and current, Customer shall maintain a limited right in possessory interest in the Managed Services Hardware. No title in the Managed Services Hardware will pass to Customer at any time or for any reason. Customer agrees to maintain adequate insurance against fire, theft, or other loss for the Managed Services Hardware full insurable value. CentralSquare shall coordinate any defect or warranty claims in accordance with Exhibit 7, if applicable.
- 2.8. Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to the Solutions, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in the Solutions, and the Third-Party Materials are and will remain with CentralSquare and the respective rights holders.

3. Use Restrictions. Authorized Users shall not:

- 3.1. copy, modify, or create derivative works or improvements of the Solutions, or rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Solutions to any Entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- 3.2. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Solutions, in whole or in part;
- 3.3. bypass or breach any security device or protection used by Solutions or access or use the Solutions other than by an Authorized User through the use of his or her own then valid access;
- 3.4. input, upload, transmit, or otherwise provide to or through the CentralSquare Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code (any software, hardware, device, or other technology, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede any (i) computer, software firmware, hardware, system or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Solutions as intended by this Agreement;
- 3.5. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the CentralSquare Systems, or CentralSquare's provision of services to any third-party, in whole or in part;
- 3.6. remove, delete, alter, or obscure any trademarks, specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Documentation or Solutions, including any copy thereof;
- 3.7. access or use the Solutions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third-party, or that violates any applicable law;

- 3.8. access or use the Solutions for purposes of competitive analysis of the Solutions, the development, provision, or use of a competing software service or product or any other purpose that is to CentralSquare's detriment or commercial disadvantage or otherwise access or use the Solutions beyond the scope of the authorization granted in Section 2.

4. Audit.

- 4.1. CentralSquare shall have the right to audit Customer's use of the Software to monitor compliance with this Agreement. Customer shall permit CentralSquare and its directors, officers, employees, and agents to have on-site access at Customer's premises (or remote access as the case may be) during normal business hours to such systems, books, and records for the purpose of verifying license counts, access counts, and overall compliance with this Agreement. Customer shall render reasonable cooperation to CentralSquare as requested. If as a result of any audit or inspection CentralSquare substantiates a deficiency or non-compliance, or if an audit reveals that Customer has exceeded the restrictions on use, Customer shall promptly reimburse CentralSquare for all its costs and expenses incurred to conduct such audit or inspection and be required to pay for any delinquencies in compliance and prompt payment of any underpayment of Fees.

5. Customer Obligations.

- 5.1. Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair all Customer Systems on or through which the Solutions are accessed or used; (b) provide CentralSquare Personnel with such access to Customer's premises and Customer Systems as is necessary for CentralSquare to perform the Support Services in accordance with the Support Standards and specifications and if required by CentralSquare, remote access in accordance with Exhibit 3 (CentralSquare Access Management Policy); and (c) provide all cooperation as CentralSquare may reasonably request to enable CentralSquare to exercise its rights and perform its obligations under this Agreement.
- 5.2. Effect of Customer Failure or Delay. CentralSquare is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.
- 5.3. Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section **Error! Reference source not found.**, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Solutions and permanently erasing from their systems and destroying any data to which any of them gained unauthorized access); and (b) notify CentralSquare of any such actual or threatened activity.
- 5.4. Maintaining Current Versions of CentralSquare Solutions. In accordance with Exhibit 2 (Maintenance & Support) and Exhibit 7 (Managed Services Provisions), if applicable. Customer shall install and/or use any New or Major Release within one year of being made available by CentralSquare to mitigate a performance problem, ineligibility for Support Services, or an infringement claim.

6. Professional Services.

- 6.1. Compliance with Customer Policies. While CentralSquare personnel are performing services at Customer's site, CentralSquare personnel will comply with Customer's reasonable procedures and site policies that are generally applicable to Customer's other suppliers providing similar services and that have been provided to CentralSquare in writing or in advance.
- 6.2. Contributed Material. In the process of CentralSquare's performing Professional Services, Customer may, from time to time, provide CentralSquare with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solutions, the Documentation or any other deliverables ("**Contributed Material**"). Customer grants to CentralSquare a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of any kind and without the right of attribution, for CentralSquare, CentralSquare's Affiliates and CentralSquare's licensees to make, use, sell and create derivative works of the Contributed Material.

7. Confidentiality.

- 7.1. Nondisclosure. The Parties agree, unless otherwise provided in this Agreement or required by law, not to use or make each other's Confidential Information available to any third party for any purpose other than as necessary to perform under this Agreement. "**Confidential Information**" means the Solution(s), Software, and customizations in any embodiment, and either Party's technical and business information relating to inventions or software, research and development, future product specifications, engineering processes, costs, profit or margin information, marketing and future business plans as well as any and all internal Customer and employee information, and any information exchanged by the Parties that is clearly marked with a confidential, private or proprietary legend or which, by its nature, is commonly understood to be confidential.
- 7.2. Exceptions. A Party's Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and was not obtained by the recipient either directly or indirectly from the disclosing Party; (c) is lawfully

disclosed to the recipient by a third party without restriction on recipient's disclosure, and where recipient was not aware that the information was the confidential information of discloser; (d) is independently developed by the recipient without violation of this Agreement; or (e) is required to be disclosed by law.

8. **Security.**

- 8.1. CentralSquare will implement commercially reasonable administrative, technical and physical safeguards designed to ensure the security and confidentiality of Customer Data, protect against any anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access or use of Customer Data. CentralSquare will review and test such safeguards on no less than an annual basis.
- 8.2. Customer shall maintain, in connection with the operation or use of the Solutions, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication, non-repudiation, virus detection and eradication.
- 8.3. To the extent that Authorized Users are permitted to have access to the Solutions, Customer shall maintain agreements with such Authorized Users that adequately protect the confidentiality and Intellectual Property Rights of CentralSquare in the Solutions and Documentation and disclaim any liability or responsibility of CentralSquare with respect to such Authorized Users.

9. **Personal Data.** If CentralSquare processes or otherwise has access to any personal data or Personal Information on Customer's behalf when performing CentralSquare's obligations under this Agreement, then:

- 9.1. Customer shall be the data controller (where "**data controller**" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and CentralSquare shall be a data processor (where "**data processor**" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own);
- 9.2. Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or Personal Information to CentralSquare so that CentralSquare may lawfully use, process and transfer the personal data and Personal Information in accordance with this Agreement on Customer's behalf, which may include CentralSquare processing and transferring the relevant personal data or Personal Information outside the country where Customer and the Authorized Users are located in order for CentralSquare to provide the Solutions and perform its other obligations under this Agreement; and
- 9.3. CentralSquare shall process personal data and information only in accordance with lawful and reasonable written instructions given by Customer and as set out in and in accordance with the terms of this Agreement; and
- 9.4. CentralSquare shall take reasonable steps to ensure that its employees, agents and contractors who may have access to Personal Information are persons who need to know / access the relevant Personal Information for valid business reasons; and
- 9.5. each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and Personal Information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and Personal Information and the nature of the personal data and Personal Information being protected. If necessary, the Parties will cooperate to document these measures taken.

10. **Representations and Warranties.**

- 10.1. **Intellectual Property Warranty.** CentralSquare represents and warrants that (a) it is the sole and exclusive owner of (or has the right to license) the software; (b) it has full and sufficient right, title and authority to grant the rights and/or licenses granted under this Agreement; (c) the software does not contain any materials developed by a third party used by CentralSquare except pursuant to a license agreement; and (d) the software does not infringe any patent, or copyright.
- 10.2. **Intellectual Property Remedy.** In the event that any third party asserts a claim of infringement against the Customer relating to the software contained in this Agreement, CentralSquare shall indemnify and defend the Customer pursuant to section 13.1 of this Agreement. In the case of any such claim of infringement, CentralSquare shall either, at its option, (1) procure for Customer the right to continue using the software; or (2) replace or modify the software so that that it becomes non-infringing, but equivalent in functionality and performance.
- 10.3. **Software Warranty.** CentralSquare warrants to Customer that: (i) for a period of one year from the Effective Date (the "Warranty Period") the Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; and (ii) at the time of delivery the Software does not contain any virus or other malicious code.
- 10.4. **Software Remedy.** If, during the Warranty Period a warranty defect is confirmed in the CentralSquare Software, CentralSquare shall, at its option, reinstall the Software or correct the Defects. Defects that occur in the Software after the Warranty Period will be corrected pursuant to Exhibit 2 (Maintenance & Support) and Exhibit 7

(Managed Services Provisions), if applicable.

- 10.5. **Services Warranty.** CentralSquare warrants that the Professional Services delivered will substantially conform to the deliverables specified in the applicable statement of work and that all Professional Services will be performed in a professional and workmanlike manner consistent with industry standards for similar work. If Professional Services do not substantially conform to the deliverables, Customer shall notify CentralSquare of such non-conformance in writing, within 10 days from completion of Professional Service, and CentralSquare shall promptly repair the non-conforming deliverables.

- 10.6. **Disclaimer of Warranty.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE, CENTRALSQUARE MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE INTELLECTUAL PROPERTY, SOFTWARE, PROFESSIONAL SERVICES, AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT CENTRALSQUARE DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE. FURTHER, CENTRALSQUARE EXPRESSLY DOES NOT WARRANT THAT A SOLUTION, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER IF THE SOLUTION OR CUSTOM MODIFICATION HAS BEEN MODIFIED BY ANYONE OTHER THAN CENTRALSQUARE PERSONNEL, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY. THIS AGREEMENT DOES NOT AMEND, OR MODIFY CENTRALSQUARE'S WARRANTY UNDER ANY AGREEMENT OR ANY CONDITIONS, LIMITATIONS, OR RESTRICTIONS THEREOF.

11. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when delivered personally, sent by United States registered or certified mail, return receipt requested; transmitted by facsimile or email confirmed by first class mail, or sent by overnight courier. Notices must be sent to a Party at its address shown below, or to such other place as the Party may subsequently designate for its receipt of notices in writing by the other Party.

If to CentralSquare: **CentralSquare Technologies, LLC**
1000 Business Center Dr.
Lake Mary, FL 32746
Phone: 407-304-3235
Attention: Legal/Contracts

If to Customer: **City of Fayetteville**
113 West Mountain Street
Fayetteville, AR 72701
Phone: 479-575-8320
Email: kmacedo@fayetteville-ar.gov
Attention: Keith Macedo

12. **Force Majeure.**

Neither Party shall be responsible for failure to fulfill its obligations hereunder, or be liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, pandemic or epidemic, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment, software, or services from suppliers, default of a subcontractor or vendor to the Party if such default arises out of causes beyond the reasonable control of such subcontractor or vendor, the acts or omissions of the other Party, or its officers, directors, employees, agents, contractors, or elected officials, and/or other occurrences beyond the Party's reasonable control ("Excusable Delay" hereunder). In the event of such Excusable Delay, performance shall be extended on a day for day basis or as otherwise reasonably necessary to compensate for such delay.

13. **Indemnification.**

- 13.1. **CentralSquare Indemnification.** CentralSquare shall indemnify, defend, and hold harmless Customer from any and all Claims or liability, including attorneys' fees and costs, brought by a third party, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising solely from a wrongful or negligent act, error or omission of CentralSquare, its employees, agents, contractors, or any subcontractor as a result of CentralSquare's or any subcontractor's performance pursuant to this Agreement; however, CentralSquare shall not be required to indemnify Customer for any claims caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a Claim or liability results from or is contributed to by the actions or omissions of Customer, or

its employees, agents or contractors, CentralSquare's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.

- 13.2. **Customer Indemnification.** To the extent allowable by law, Customer shall indemnify, defend, and hold harmless CentralSquare from any and all Claims or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising solely from a wrongful or negligent act, error or omission of Customer, its employees, agents, contractors, or any subcontractor as a result of Customer's or any subcontractor's performance pursuant to this Agreement; however, Customer shall not be required to indemnify CentralSquare for any Claims or actions caused to the extent of the negligence or wrongful act of CentralSquare, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a Claim or liability results from or is contributed to by the actions or omissions of CentralSquare, or its employees, agents or contractors, Customer's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault.
- 13.3. **"Claim"** in this Section 13 means any claim, cause of action, demand, lawsuit, dispute, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.

14. Termination.

- 14.1. Either Party may terminate this Agreement for a material breach in accordance with this subsection. In such event, the disputing Party shall deliver written notice of its intent to terminate along with a description in reasonable detail of the problems for which the disputing Party is invoking its right to terminate and the specific requirement within this Agreement or any exhibit or schedule hereto that the disputing Party is relying upon. Following such notice, the Parties shall commence dispute resolution procedures in accordance with the dispute resolution procedure pursuant to Section 17.
- 14.2. CentralSquare shall have the right to terminate this Agreement based on Customer's failure to pay undisputed amounts due under this Agreement more than ninety (90) days after delivery of written notice of non-payment.
- 14.3. Customer shall have the right to terminate if the proper appropriation of funds for the continuation of this Agreement is not available for any fiscal year after the first fiscal year during the Term, then this Agreement may be terminated. To effect the termination of this Agreement, Customer shall, within forty-five (45) days following the beginning of the fiscal year for which the proper appropriation is not available, provide CentralSquare with written notice of the failure to obtain the proper appropriation of funds. Such notice shall be accompanied by the payment of all sums then owed CentralSquare under this Agreement, if any.

15. Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

- 15.1. All rights, licenses, and authorizations granted to Customer hereunder will immediately terminate and Customer shall immediately cease all use of CentralSquare's Confidential Information and the Solutions, and within thirty (30) days deliver to CentralSquare, or at CentralSquare's request destroy and erase CentralSquare's Confidential Information from all systems Customer directly or indirectly controls; and
- 15.2. All licenses, access or subscription fees, services rendered but unpaid, and any amounts due by Customer to CentralSquare of any kind shall become immediately payable and due no later than thirty (30) days after the effective date of the termination or expiration, including anything that accrues within those thirty (30) days.
- 15.3. The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by its nature (including but not limited to: Use Restrictions, Confidential Information, Warranty Disclaimers, Indemnifications, & Limitations of Liability), will survive any expiration or termination of this Agreement.
- 15.4. In the event that Customer terminates this Agreement or cancels any portions of a project (as may be set forth in a Statement of Work) prior to Go Live (which shall be defined as "first use of a Solution or module of a Solution in a production environment, unless otherwise agreed by the Parties in a statement of work"), Customer shall pay for all Professional Services actually performed by CentralSquare on a time and materials basis, regardless of the payment terms in Exhibit 1.
- 15.5. **Return of Customer Data.** If Customer requests in writing at least ten (10) days prior to the effective date of expiration or earlier termination of this Agreement, CentralSquare shall within sixty (60) days following such expiration or termination, deliver to Customer in CentralSquare's standard format the then most recent version of Customer Data maintained by CentralSquare, provided that Customer has at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination.
- 15.6. **Deconversion.** In the event of (i) expiration or earlier termination of this Agreement, or (ii) Customer no longer purchasing certain Solutions (including those indicated to be Third-Party Materials), if Customer requests assistance in the transfer of Customer Data to a different vendor's applications ("Deconversion"), CentralSquare will provide reasonable assistance. CentralSquare and Customer will negotiate in good faith to establish the relative roles and responsibilities of CentralSquare and Customer in effecting Deconversion, as well as the appropriate date for completion. CentralSquare shall be entitled to receive compensation for any additional consultation, services, software, and documentation required for Deconversion on a time and materials basis at CentralSquare's then standard rates.
- 15.7. Termination of this Agreement shall not relieve either Party of any other obligation incurred one to the other prior to termination.

16. **Assignment.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided however, that in the event of a merger or acquisition of all or substantially all of CentralSquare's assets, CentralSquare may assign this Agreement to an entity ready, willing and able to perform CentralSquare's executory obligations hereunder.
17. **Dispute Resolution.** Any dispute, controversy or claim arising out of or relating to this Agreement (each, a "Dispute"), including the breach, termination, or validity thereof, shall be resolved as follows:
 - 17.1. **Good Faith Negotiations.** The Parties agree to send written notice to the other Party of any Dispute ("Dispute Notice"). After the other Party receives the Dispute Notice, the Parties agree to undertake good faith negotiations to resolve the Dispute. Each Party shall be responsible for its associated travel and other related costs.
 - 17.2. **Escalation to Mediation.** If the Parties cannot resolve any Dispute through good faith negotiations, the dispute will be escalated to non-binding mediation, with the Parties acting in good faith to select a mediator and establishing the mediation process. The Parties agree the mediator's fees and expenses, and the mediator's costs incidental to the mediation, will be shared equally between the Parties. The Parties shall bear their own fees, expenses, and costs.
 - 17.3. **Confidential Mediation.** The Parties further agree all written or oral offers, promises, conduct, and statements made in the course of the mediation are confidential, privileged, and inadmissible for any purpose in any litigation, arbitration or other proceeding involving the Parties. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
 - 17.4. **Litigation.** If the Parties cannot resolve a Dispute through mediation, then once an impasse is declared by the mediator either Party may pursue litigation in a court of competent jurisdiction.
18. **Waiver/Severability.** The failure of any Party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. If any provision of this Agreement is found to be unenforceable, that provision will be enforced to the maximum extent possible, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
19. **LIABILITY. NOTWITHSTANDING ANY PROVISION WITHIN THIS AGREEMENT TO THE CONTRARY, AND REGARDLESS OF THE NUMBER OF LOSSES, WHETHER IN CONTRACT, EQUITY, STATUTE, TORT, NEGLIGENCE, OR OTHERWISE:**
 - 19.1. **NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO, REPLACEMENT COSTS, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR LOSSES OF PROFIT, REVENUE, INCOME, BUSINESS, ANTICIPATED SAVINGS, DATA, AND REPUTATION, AND MORE GENERALLY, ANY LOSSES OF AN ECONOMIC OR FINANCIAL NATURE, REGARDLESS OF WHETHER SUCH LOSSES MAY BE DEEMED AS CONSEQUENTIAL OR ARISING DIRECTLY AND NATURALLY FROM THE INCIDENT GIVING RISE TO THE CLAIM, AND REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES; AND**
 - 19.2. **CENTRALSQUARE'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT(S) ACTUALLY PAID BY CUSTOMER TO CENTRALSQUARE HEREUNDER FOR THE LAST TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM AROSE.**
20. **Insurance.** During the term of this Agreement, CentralSquare shall maintain insurance coverage covering its operations in accordance with Exhibit 4 (Certificate of Insurance (Evidence of Coverage)). Upon request by Customer, CentralSquare shall include Customer as an additional insured on applicable insurance policies provided under this Agreement. CentralSquare shall provide proof of current coverage during the term of this Agreement.
21. **Third-Party Materials.** CentralSquare may, from time to time, include third parties to perform services, provide software, or provide equipment. Customer acknowledges and agrees CentralSquare provides front-line support services for these Third-Party Materials, but these third parties assume all responsibility and liability in connection with the Third-Party Materials. CentralSquare is not authorized to make any representations or warranties that are binding upon the third-party or to engage in any other acts that are binding upon the third-party, except specifically that CentralSquare is authorized to represent third-party fees and to accept payment of such amounts from Customer on behalf of the third-party for as long as such third-party authorizes CentralSquare to do so. As a condition precedent to installing or accessing certain Third-Party Materials, Customer may be required to execute a click-through, shrink-wrap End User License Agreement ("EULA") or similar agreement provided by the Third-Party Materials provider. If mapping information is supplied with the CentralSquare Software, CentralSquare makes no representation or warranty as to the completeness or accuracy of the mapping data provided with the CentralSquare Software. The completeness or accuracy of such data is solely dependent on the information supplied by the Customer or the mapping database vendor to CentralSquare. All third-party materials are provided "as-is" and any representation or warranty concerning them is strictly between Customer and the third-party.
22. **Subcontractors.** CentralSquare may from time to time, in its discretion, engage third parties to perform services on its behalf including but not limited to Professional Services, Support Services, and/or provide software (each, a "Subcontractor"). CentralSquare shall be fully responsible for the acts of all subcontractors to the same extent it is

responsible for the acts of its own employees.

23. **Entire Agreement.** This Agreement, and any Exhibits specifically incorporated therein by reference, constitute the entire agreement between the Parties with respect to the subject matter. These documents supersede and merge all previous and contemporaneous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the Parties with respect to the subject hereof.
24. **Amendment.** Either Party may, at any time during the term, request in writing changes to this agreement. The Parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in either a CentralSquare issued add-on quote signed by Customer, or a written change order or amendment to this Agreement signed by both Parties.
25. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.
26. **Counterparts.** This Agreement, and any amendments hereto, may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. The Agreement (and any amendments) shall be considered properly executed by a Party if executed by that Party and transmitted by facsimile or other electronic means, such as DocuSign, Tagged Image Format Files (TIFF), or Portable Document Format (PDF).
27. **Material Adverse Change.** If any law, regulation, applicable standard, process, OEM requirement is changed or comes into force after the Effective Date, including but not limited to PCI standards or Americans with Disabilities Act compliance (collectively, a "Material Adverse Change"), which is not explicitly addressed within this Agreement and results in *significant extra* costs for either Party in relation to the performance of this Agreement, both Parties shall promptly meet, discuss in good faith, and agree upon reducing the technical, operational, and/or commercial impact of such Material Adverse Change.
28. **Cooperative Purchases.** This Agreement may be used by Customer Affiliates. CentralSquare agrees to offer similar services to other Affiliates under the same terms and conditions as stated herein except that the Fees may be negotiated between CentralSquare and other Affiliates based on the specific revenue expectations, agency reimbursed costs, and other Affiliate requirements. The Customer will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such Affiliates. CentralSquare and the Affiliate will enter into any such arrangement with an amendment to this Agreement.
29. **Order of Precedence.**
 - 29.1. In the event of any conflict or inconsistency between this Agreement, the Exhibits, or any purchase order, then the following priority shall prevail:
 - 29.1.1. The main body of this Agreement and any associated amendments, statements of work, or change orders and then the attached Exhibits to this Agreement in the order in which they appear.
 - 29.2. Customer's purchase terms and conditions or CentralSquare's sales terms and conditions are not applicable and shall have no force or effect, whether referenced in any document in relation to this Agreement.
 - 29.3. Incorporated Exhibits to this Agreement:
 - Exhibit 1:** Solution(s) Support and Maintenance Fees
 - Exhibit 2:** Maintenance & Support
 - Exhibit 3:** CentralSquare Access Management Policy
 - Exhibit 4:** Certificate of Insurance (Evidence of Coverage)

EXHIBIT 1
Solution(s) Support and Maintenance Fees

Product	6/19/2024 - 6/18/2025	6/19/2025 - 6/18/2026	6/19/2026 - 6/18/2027	6/19/2027 - 6/18/2028	6/19/2028 - 6/18/2029	6/19/2029 - 6/18/2030
Asset Management Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Web Citizen Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
GISDesktop Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
GISWeb Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mobile Site License	\$27,595.33	\$28,975.10	\$30,423.86	\$31,945.05	\$33,542.30	\$35,219.42
Work Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
API Site License	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$27,595.33	\$28,975.10	\$30,423.86	\$31,945.05	\$33,542.30	\$35,219.42

Payment Terms:

- a. Support and Maintenance Fees are due prior to the beginning of the next Renewal Period and annually thereafter.
- b. Annual Subscription Fees are due prior to the beginning of the next Renewal Period and annually thereafter.
- c. Annual Software Maintenance Fees and Annual Subscription Fees shall increase by 5% year over year.

Invoice Terms:

CentralSquare shall provide an invoice for the items in the schedule above no less than thirty (30) days prior to the due date.

Ancillary Fees:

- a. Customer is responsible for paying all taxes relating to this Agreement. Applicable tax amounts (if any) are not included in the fees set forth in this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide CentralSquare valid proof of exemption; otherwise, CentralSquare will invoice Customer and Customer will pay to CentralSquare all such tax amounts.
- b. To the extent allowable by law, if Customer fails to make any payment when due, then CentralSquare may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly, or, if lower, the highest rate permitted under applicable law; and if such failure continues for 90 days following written notice thereof, CentralSquare may suspend performance or access until past due amounts have been paid.

EXHIBIT 2

Maintenance & Support

This Maintenance & Support Exhibit describes support and maintenance relating to technical support that CentralSquare will provide to Customer during the Term of the Agreement.

1. Product Updates and Releases

- 1.1. Software Version. "Software Version" means the base or core version of the Software that contains significant new features and significant fixes and is available to the Customer. Software Versions may occur as the Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d. An example of which would be 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 3 refers to a fix. All Software Versions are provided and included as part of this Agreement.
- 1.2. Updates. From time to time CentralSquare may develop permanent fixes or solutions to known problems or bugs in the Software and incorporate them in a formal "Update" to the Software. If Customer is receiving technical support from CentralSquare on the general release date for an Update, CentralSquare will provide the Customer with the Update and related Documentation at no extra charge. Updates for custom configurations will be agreed upon by the Parties and outlined in a Statement of Work or Change Order.
- 1.3. Releases. Customer shall agree to install and/or use any New or Major Release within one year of being made available by CentralSquare to avoid or mitigate a performance problem, ineligibility for Support and Maintenance Services or infringement claim. All modifications, revisions and updates to the Software shall be furnished by means of new Releases of the Software and shall be accompanied by updates to the Documentation whenever CentralSquare determines, in its sole discretion, that such updates are necessary.

2. Support

- 2.1. CentralSquare shall provide to Customer support via toll-free phone number 833-278-7877 or via the CentralSquare Support Portal. CentralSquare shall provide to Customer, commercially reasonable efforts in solving errors reported by the Customer as well as making available an online support portal. Customer shall provide to CentralSquare reasonably detailed documentation and explanation, together with underlying data, to substantiate errors and to assist CentralSquare in its efforts to diagnose, reproduce and correct the error. Should either Party not be able to locate the error root cause and Customer and CentralSquare agree that on-site services are necessary to diagnose or resolve the problem CentralSquare shall provide a travel estimate and estimated hours in order to diagnose the reported error.
- 2.2. If after traveling onsite to diagnose a reported error and such reported error did not, in fact, exist or was not attributable to a defect in the Software provided by CentralSquare or an act or omission of CentralSquare, then Customer shall pay for CentralSquare's investigation, travel, and related services in accordance with provided estimate. Customer must provide CentralSquare with such facilities, equipment and support as are reasonably necessary for CentralSquare to perform its obligations under this Exhibit, including remote access in accordance with the Remote Access Policy.

3. Online Support Portal

Online support is available via <https://support.centalsquare.com/s/contact-us>, offering Customer the ability to resolve its own problems with access to CentralSquare's most current information. Customer will need to enter its designated username and password to gain access to the technical support areas on CentralSquare's website. CentralSquare's technical support areas allow Customer to: (i) search an up-to-date knowledge base of technical support information, technical tips, and featured functions; and (ii) access answers to frequently asked questions (FAQ).

4. Exclusions from Technical Support Services

CentralSquare shall have no support obligations to provide Support or Maintenance for Solutions that are not kept current to one version prior to the then current version of the Solution. CentralSquare shall have no support obligations with respect to any third-party hardware or software product not licensed or sold to Customer by CentralSquare ("Nonqualified Product"). Customer shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

5. Customer Responsibilities

In connection with CentralSquare's provision of technical support as described herein, Customer acknowledges that Customer has the responsibility to do each of the following:

- 5.1 Provide hardware, operating system and browser software that meets technical specifications, as well as a fast, stable, high-speed connection and remote connectivity for accessing the Solution.
- 5.2 Maintain any applicable computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to CentralSquare are not due to hardware malfunction;
- 5.3 For CentralSquare Solutions that are implemented on Customer Systems, maintain the designated

operating system at the latest code revision level reasonably deemed necessary by CentralSquare for proper operation of the Software;

- 5.4 Supply CentralSquare with access to and use of all information and facilities reasonably determined to be necessary by CentralSquare to render the technical support described herein;
- 5.5 Perform any test or procedures reasonably recommended by CentralSquare for the purpose of identifying and/or resolving any problems;
- 5.6 At all times follow routine operator procedures as specified in the Documentation or any error correction guidelines of CentralSquare posted on the CentralSquare website;
- 5.7 Customer shall remain solely responsible at all times for the safeguarding of Customer's proprietary, confidential, and classified information contained within Customer Systems; and
- 5.8 Reasonably ensure that the Customer Systems are isolated and free from viruses and malicious code that could cause harm before requesting or receiving remote support assistance.

6. **Priorities and Support Response Matrix**

The following priority matrix relates to software errors covered by this Agreement. Causes secondary to non-covered causes - such as hardware, network, and third-party products - are not included in this priority matrix and are outside the scope of this Exhibit. CentralSquare will make commercially reasonable efforts to respond to Software incidents for live remote based production systems using the following guidelines:

Priority	Issue Definition	Response Time
Priority 1 – Urgent	The software is completely down and will not launch or function.	Priority 1 issues must be called in via 833-278-7877 and will be immediately answered and managed by the first available representative.
Priority 2 – Critical	A high-impact problem that disrupts the customer's operation but there is capacity to remain productive and maintain necessary operations.	Priority 2 issues must be called in via 833-278-7877 and will be immediately answered and managed by the first available representative.
Priority 3 – Non-Critical	A Software Error related to a user function which does not negatively impact the User from the use of the system. This includes system administrator functions or restriction of user workflow but does not significantly impact their job function.	Priority 3 issues called in via 833-278-7877 will be immediately answered and managed by the first available representative. Non-Critical Priority 3 issues may also be reported via https://support.centalsquare.com/s/contact-us
Priority 4 – Minor	Cosmetic or documentation errors, including Customer technical questions or usability questions.	Priority 4 issues called in via 833-278-7877 will be immediately answered and managed by the first available representative. Minor Priority 4 issues may also be reported via https://support.centalsquare.com/s/contact-us

7. **Exceptions.** CentralSquare shall not be responsible for failure to carry out its Support and Maintenance obligations under this Exhibit if the failure is caused by adverse impact due to:
 - 7.1. defectiveness of the Customer's Systems (including but not limited to environment, hardware or ancillary systems), or due to Customer corrupt, incomplete, or inaccurate data reported to the Solution, or documented defect.
 - 7.2. denial of reasonable access to Customer's System or premises preventing CentralSquare from addressing the issue.
 - 7.3. material changes made to the usage of the Solution by Customer where CentralSquare has not agreed to such changes in advance and in writing or the modification or alteration, in any way, by Customer or its subcontractors, of communications links necessary to the proper performance of the Solution.
 - 7.4. a Force Majeure event (as outlined in Section 12), or the negligence, intentional acts, or omissions of Customer or its agents.
8. **Incident Resolution.** Actual response times and resolutions may vary due to issue complexity and priority. For critical impact level and above, CentralSquare provides a continuous resolution effort until the issue is resolved. CentralSquare will make commercially reasonable efforts to resolve Software incidents for live remote based production systems using the following guidelines:

Priority	Resolution Process	Resolution Time
Priority 1 – Urgent	CentralSquare will provide a procedural or configuration workaround or a code correction that allows the Customer to resume live operations on the production System.	CentralSquare will work continuously to provide the Customer with a solution that allows the Customer to resume live operations on the production system. CentralSquare will either resolve the issue or provide a resolution plan as soon as possible and not later than twenty-four (24) hours after notification.
Priority 2 – Critical	CentralSquare will provide a procedural or configuration workaround or a code correction that allows the Customer to resume normal operations on the production System.	CentralSquare will work continuously to provide the Customer with a solution that allows the Customer to resume normal operations on the production System. CentralSquare will either resolve the issue or provide a resolution plan as soon as possible and not later than thirty-six (36) hours after notification.
Priority 3 – Non – Critical	CentralSquare will provide a procedural or configuration workaround that allows the Customer to resolve the problem.	CentralSquare will work to provide the Customer with a resolution which may include a workaround or code correction within a timeframe that takes into consideration the impact of the issue on the Customer and CentralSquare's User base. Priority 3 issues have priority scheduling in a subsequent release.
Priority 4 – Minor	If CentralSquare determines that a reported Minor Priority error requires a code correction, such issues will be addressed in a subsequent release when applicable.	CentralSquare will work to provide the Customer with a resolution which may include a workaround or code correction in a future release of the software. Priority 4 issues have no defined resolution time.

9. Non-Production Environments. CentralSquare will make commercially reasonable efforts to provide fixes to non-production environment(s). Non-production environments are not included under the response or resolution tables provided in this Exhibit.

9.1. Maintenance. All non-production environment resolution processes will follow the structure and schedules outlined above for production environments.

9.2. Incidents and service requests. Non-production environment incidents are considered priority 3 or 4, dictated by circumstances and will be prioritized and scheduled subordinate to production environment service requests.

10. Training. Outside the scope of training services purchased, if any, Customer is responsible for the training and organization of its staff in the operation of the Software.

11. Development Work. Software support and maintenance does not include development work either (i) on software not licensed from CentralSquare or (ii) development work for enhancements or features that are outside the documented functionality of the Software, except such work as may be specifically purchased and outlined in the Agreement. CentralSquare retains all intellectual property rights in development work performed and Customer may request consulting and development work from CentralSquare as a separate billable service.

12. Technology Life Expectancy. Customer understands, acknowledges and agrees that the technology upon which the Hardware, Solution and Third-Party Software is based changes rapidly. Customer further acknowledges that CentralSquare will continue to improve the functionality and features of the Solution to improve legal compliance, accuracy, functionality and usability. As a result, CentralSquare does not represent or warrant that the Hardware, Solution and/or Third-Party Software provided to Customer under this Agreement or that the Customer Systems recommended by CentralSquare will function for an indefinite period of time. Rather, CentralSquare and Customer may, from time to time, analyze the functionality of the Hardware, Solution, Third-Party Software and Customer Systems in response to changes to determine whether Customer must upgrade the same. Customer upgrades may include without limitation, the installation of a new Release, additional disk storage and memory, and workstation and/or server upgrades. Customer upgrades may also include the installation and/or removal of Third-Party Software. Customer is solely responsible for all costs associated with future resources and upgrades.

EXHIBIT 3

CentralSquare Access Management Policy

In order to provide secure, federally compliant connections to agency systems CentralSquare Technologies (“CentralSquare”) requires BeyondTrust or SecureLink as the only approved methodology of connection. BeyondTrust and Securelink provide the necessary remote access in order to service and maintain CentralSquare products while adhering to the Federal Bureau of Investigations Criminal Justice Information Services requirements. Both solutions utilize two-factor authentication Federal Information Processing Standard Publication (“FIPS”) 140-2 validated cryptographic modules and AES encryption in 256-bit strengths.

BeyondTrust and Securelink are addressed in turn via this Access Management Policy; Customers may choose which remote privileged access management solution will be utilized by CentralSquare.

BeyondTrust

The BeyondTrust remote support solution may be utilized via escorted session or a jump Customer. As for an escorted session, when an agency needs assistance from CentralSquare, the agency employee requesting assistance will receive verbal or email communication with a session key necessary to enable remote access. If a verbal key is provided, the user enters the session key after visiting <https://securesupport.centalsquare.com>.

Jump Customers are a Windows service that can be stopped/started to facilitate a support session. Connections made via jump Customer can be active or passive. An active jump Customer is always available. A passive connection is enabled for a specific purpose and then disabled when not used. Regardless of the option selected, CentralSquare’s support team will arrange a BeyondTrust session to establish the jump Customer.

The jump Customer resides on the agency side on the installed device, where an agency administrator can manage. Instructions on how to enable/disable jump Customers can be provided upon request. A sample workflow of a passive jump Customer is provided below:

Should an agency require support from CentralSquare, a call would be placed and/or a support ticket opened in the portal on the CentralSquare customer support website. Before accessing the agency’s system and/or environment, the CentralSquare representative would send a notice of connection from the CentralSquare support portal instance. This notice can be sent to the individual at the agency that the CentralSquare representative is working with or other designated contacts as necessary. Upon receipt of the notice of connection, the agency personnel would enable the BeyondTrust jump Customer. The CentralSquare representative would then be admitted to the agency’s system and/or environment to perform the necessary task. Upon completion of the task, the CentralSquare representative sends a notice of disconnection from the CentralSquare support portal instance. Upon receipt of the notice of disconnection, the agency personnel would then disable the BeyondTrust jump Customer.

Securelink

Similar to BeyondTrust’s escorted session, Securelink may be utilized via “quick connect”. To enable a quick connect session when an agency needs assistance from CentralSquare, the Agency employee requesting assistance will enter a key code in order to connect for screen sharing on a device.

Similar to the jump Customer methodology, SecureLink may also be utilized via “gatekeeper”. The sample workflow description for a jump Customer provided above is substantially similar to the workflow for gatekeeper.

Summation

BeyondTrust and Securelink allow customers the ability to monitor connectivity to the customer’s network and maintain CJIS compliance while enabling CentralSquare to perform the necessary support functions.

EXHIBIT 4
Certificate of Insurance (Evidence of Coverage)

		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 09/01/2023													
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.																	
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).																	
PRODUCER MARSH USA, LLC. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326 CN130114897-EOIC-GAWU-23-24			CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : The Charter Oak Fire Insurance Co.</td> <td style="width: 20%;">25615</td> </tr> <tr> <td>INSURER B : Phoenix Insurance Company</td> <td>25623</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty Company Of America</td> <td>25674</td> </tr> <tr> <td>INSURER D : Travelers Casualty And Surety Company</td> <td>19038</td> </tr> <tr> <td>INSURER E : AIG Specialty Insurance Company</td> <td>26883</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>			INSURER A : The Charter Oak Fire Insurance Co.	25615	INSURER B : Phoenix Insurance Company	25623	INSURER C : Travelers Property Casualty Company Of America	25674	INSURER D : Travelers Casualty And Surety Company	19038	INSURER E : AIG Specialty Insurance Company	26883	INSURER F :	
INSURER A : The Charter Oak Fire Insurance Co.	25615																
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INSURER D : Travelers Casualty And Surety Company	19038																
INSURER E : AIG Specialty Insurance Company	26883																
INSURER F :																	
INSURED CentralSquare Technologies, LLC 1000 Business Center Drive Lake Mary, FL 32746																	
COVERAGES CERTIFICATE NUMBER: ATL-005494481-01 REVISION NUMBER: 0																	
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.																	
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBRINSD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS										
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			H-630-6S758660-COF-23	08/31/2023	08/31/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000 \$										
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY ☐ AUTOS ONLY			BA-6S783539-23-I3-G	08/31/2023	08/31/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$										
C	☒ UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP-6S801390-23-I3	08/31/2023	08/31/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$										
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-6S783668-23-I3-G	08/31/2023	08/31/2024	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000										
E	E&O/Cyber			01-424-27-66	08/31/2023	08/31/2024	Limit 5,000,000 SIR 1,000,000										
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Evidence of Insurance																	
CERTIFICATE HOLDER CentralSquare Technologies LLC 1000 Business Center Drive Lake Mary, FL 32746				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA LLC 													

ACORD 25 (2016/03)

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MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
FROM: Peter Nierengarten, Environmental Director
SUBJECT: **A resolution to award RFP #24-08 and authorize a contract with Raftelis Financial Consultants, LLC for \$111,858.00 for the development of a comprehensive rate study for the Recycling and Trash Collection Division, approving a budget adjustment and approving a ten percent (10%) project and contract contingency**

RECOMMENDATION:

Approve a contract with Raftelis Financial Consultants, LLC for the development of a comprehensive cost-of-service and rates study for the Recycling and Trash Collection Division, approving a ten (10%) project contingency and approving a budget adjustment

BACKGROUND:

In December 2018, the Fayetteville City Council adopted the City's last Recycling and Trash Collections rate study and implemented the City's current rates. That rate study and recommended rate structure was designed to provide revenue stability for a five-year operational period.

DISCUSSION:

With the continued growth of the city and associated expansion of Recycling and Trash Collection Services along with increased landfill tipping fees, staff believes that an updated rate study is necessary to adequately fund the existing and future solid waste services and anticipate capital and debt service costs. The study will include an assessment of existing operations and analysis of the City of Fayetteville's Recycling and Trash Collection user characteristics, a review of the City's current collection equipment, and review of the City's current collection routes and timing. The study will make recommendations for refinements and modifications to the rate structure necessary to fund existing and future activities and necessary infrastructure investments.

BUDGET/STAFF IMPACT:

The study cost is \$111,858 plus a 10% project contingency. Sufficient funds have been budgeted for the rate study in the Recycling and Trash Collections CIP.

ATTACHMENTS: SRF (#3), BA (#4), RFP 24-08 Contract - Signed (#5), RFP 24-08, Appendix A - Scope of Work (#6), RFP 24-08, Appendix B - Raftelis Proposal (#7), RFP 24-08, Appendix C - City Issued RFP (#8)



City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-416

A resolution to award RFP #24-08 and authorize a contract with Raftelis Financial Consultants, LLC for \$111,858.00 for the development of a comprehensive rate study for the Recycling and Trash Collection Division, approving a budget adjustment and approving a ten percent (10%) project and contract contingency

A RESOLUTION TO AUTHORIZE A CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS, LLC. PURSUANT TO RFP 24-08, IN THE AMOUNT OF \$111,858.00 FOR THE DEVELOPMENT OF A COMPREHENSIVE RATE STUDY FOR THE RECYCLING AND TRASH COLLECTION DIVISION, TO APPROVE A 10% PROJECT CONTINGENCY, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, in December 2018, City Council adopted the City's last Recycling and Trash Collections rate study and implemented the City's current rates; and

WHEREAS, that rate study and recommended rate structure was designed to provide revenue stability for a five-year operational period; and

WHEREAS, with the continued growth of the city and associated expansion of Recycling and Trash Collection Services along with increased landfill tipping fees, staff believes that an updated rate study is necessary to adequately fund the existing and future solid waste services and anticipate capital and debt service costs; and

WHEREAS, the study will include an assessment of existing operations and analysis of the City of Fayetteville's Recycling and Trash Collection user characteristics, a review of the City's current collection equipment, and review of the City's current collection routes and timing; and

WHEREAS, the study will make recommendations for refinements and modifications to the rate structure necessary to fund existing and future activities and necessary infrastructure investments.

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 contract with Raftelis Financial Consultants, LLC, pursuant to RFP 24-08, in the amount of \$111,858.00 for the development of a comprehensive rate study for the recycling and trash collections division, and further approves a 10% project contingency.

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

2024-416

Item ID

8/20/2024

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

Peter Nierengarten

7/30/2024

RECYCLING/TRASH COLLECTION (750)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve a contract with Raftelis Financial Consultants, LLC in the amount of \$111,858.00 for the development of a comprehensive cost-of-service and rates study for the Recycling and Trash Collections Division, approving a ten (10%) project contingency and approving a budget adjustment

Budget Impact:

5500.750.5080-5314.00

Recycling and Trash Collections

Account Number

Fund

10004.1

Solid Waste Rate Study

Project Number

Project Title

Budgeted Item? Yes

Total Amended Budget

\$ 174,388.00

Expenses (Actual+Encum)

\$ 167.99

Available Budget

\$ 174,220.01

Does item have a direct cost? Yes

Item Cost

\$ 123,043.80

Is a Budget Adjustment attached? Yes

Budget Adjustment

\$ -

Remaining Budget

\$ 51,176.21

V20221130

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

Budget Year	Division	Adjustment Number
2024	RECYCLING/TRASH COLLECTION (750)	
	Requestor: Daryl Brigman	

Approve a contract with Raftelis Financial Consultants, LLC in the amount of \$111,858.00 for the development of a comprehensive cost-of-service and rates study for the Recycling and Trash Collections Division, approving a ten (10%) project contingency and approving a budget adjustment

	COUNCIL DATE:	8/20/2024
	ITEM ID#:	2024-416
	Holly Black	
	8/1/2024 2:30 PM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

v.2024725



This contract executed this 25 day of July, 2024, between the City of Fayetteville, Arkansas (City), of 113 W. Mountain, Fayetteville, AR 72701 and Raftelis Financial Consultants, Inc. (**RAFTELIS**) of 341 N. Maitland, Suite 300, Maitland, FL 32751 in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Purpose: The purpose of this Contract is to provide the terms and conditions necessary for the completion of a Recycling and Trash Collection Rate Study for the City of Fayetteville (the "Project"), as defined in the scope of work of RFP 24-08, Recycling and Trash Collection Rate Study.
2. Contract Documents: The Contract documents which comprise the contract between the City of Fayetteville and **RAFTELIS** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - a. Appendix A: Scope of Work & Fees
 - b. Appendix B: City Issued Solicitation for RFP 24-08, Recycling and Trash Collection Rate Study
 - c. Appendix C: **RAFTELIS's** RFP Submittal
 - d. Appendix D: **RAFTELIS's** Certificate of Insurance
3. City's Responsibilities:
 - a. The City shall make available to **RAFTELIS**, all relevant information or data it has pertinent to the Project which is required by **RAFTELIS** to perform the Services. **RAFTELIS** shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the City, including information and data originating with other consultants employed by the City whether such consultants are engaged at the request of **RAFTELIS** or otherwise. Where such information or data originates either with the City or its consultants then **RAFTELIS** shall not be responsible to the City for the consequences of any error or omission contained therein.
 - b. When requested by **RAFTELIS**, the City may engage specialist consultants directly to perform items of work necessary to enable **RAFTELIS** to carry out the Services. Whether arranged by the City or **RAFTELIS**, these services shall be deemed to be provided under direct contracts to the City unless expressly provided otherwise. If the City chooses not to engage specialist consultants, then the Parties will work cooperatively to modify the scope of services to reflect any reductions or additions to the services to be provided by **RAFTELIS**.
 - c. The City shall give prompt consideration to all documentation related to the Project prepared by **RAFTELIS** and whenever prompt action is necessary shall inform **RAFTELIS** of City's decisions in such reasonable time so as not to delay the schedule for providing the Services.

- d. The City of Fayetteville's Environmental Director is the project representative with respect to the services to be performed under this Agreement. The Environmental Director shall have complete authority to transmit instructions, receive information, interpret and define policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

4. RAFTELIS's Responsibilities:

- a. **RAFTELIS** shall furnish the necessary qualified personnel to provide the Services. **RAFTELIS** represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, **RAFTELIS** will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure **RAFTELIS's** performance. There are no other representations or warranties expressed or implied made by **RAFTELIS**. In particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply to the Services provided by **RAFTELIS** nor shall **RAFTELIS** warrant or guarantee economic, market or financial conditions, proforma projections, schedules for public agency approvals, or other factors beyond **RAFTELIS's** reasonable control.

5. Non-Assignment: **RAFTELIS** shall not assign its duties under the terms of this agreement without prior written consent of the City.

6. Indemnification and Hold Harmless:

- a. **RAFTELIS** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, but not defend, against all claims for property damage, personal injury or death, arising from **RAFTELIS's** performance under this contract to the extent caused by the negligence, gross negligence or willful misconduct by **RAFTELIS**. This clause shall not, in any form or manner, be construed to waive that tort immunity set forth under Arkansas Law.
- b. Notwithstanding anything to the contrary, the total amount of all claims the City of Fayetteville may have against **RAFTELIS** under this contract or arising from the performance or non-performance of the services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall not exceed \$500,000. As the City of Fayetteville's sole and exclusive remedy under this contract any claim, demand or suit shall be directed and/or asserted only against **RAFTELIS** and not against any of **RAFTELIS's**

employees, officers or directors. Neither the City of Fayetteville nor **RAFTELIS** shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this contract or the performance of the services on this project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

7. Insurance: **RAFTELIS** shall furnish a certificate of insurance addressed to the City of Fayetteville within ten (10) calendar days after contract finalization, presenting insurance which shall be maintained throughout the term of the Contract in compliance with the terms of RFP 24-08. If applicable, **RAFTELIS** shall require any subcontractor to provide insurance. In the event any employee engaged in work on the project under this contract is not protected under Worker's Compensation insurance, **RAFTELIS** shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of their employees are not otherwise protected. Worker's Compensation coverage shall be applicable with state law.

8. Price:

a. **RAFTELIS** shall perform the services included in this proposal for a not-to-exceed fee of \$ 111,858.00 (\$104,585.00 for Scope of Work in RFP and \$7,000.00 allowance for travel expenses).

i. **RAFTELIS** shall strive to make decisions based on what is best for the City. As such, the **RAFTELIS** compensation is structured as a not-to-exceed fee, with billing to be completed on a monthly basis until completion of project. Monthly invoice shall include a breakdown of completed tasks and/or deliverables for the previous month.

b. Additional services requested that fall outside the scope of this project shall be provided on a time-and-materials basis, subject to pre-approval utilizing the hourly billing rates located in Appendix A.

9. Payments:

a. Payments shall be made after approval and acceptance of each itemized invoice, which shall not be unreasonably withheld.

b. Unless disputed by the City, payments shall be made **30 calendar days after acceptance of invoice**. Electronic delivery to the City is preferred.

10. Terms: All work as required in the Appendix A – Scope of Work shall be completed within 275 calendar days of contract approval from Fayetteville City Council.

11. Ownership of Documents:

- a. All documents provided by the City are and remain the property of the City. **RAFTELIS** may retain reproduced copies of drawings and copies of other documents.
- b. All deliverables, whether in physical or electronic format, prepared by **RAFTELIS** or its subconsultant as part of the Project shall become the property of City; provided, however, that **RAFTELIS** shall have the unrestricted right to their use.
- c. **RAFTELIS** shall retain its rights in its standard document details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of **RAFTELIS**.
- d. **RAFTELIS** will grant the City, the State of Arkansas, and the United States of America a royalty-free, non-exclusive, non-assignable and irrevocable license to reproduce and use, and to authorize or ratify use by others, of all copyrightable material first produced or composed under this agreement by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

12. Independent Contractor: **RAFTELIS** is an independent contractor of the City and shall maintain complete responsibility for applicable state or federal law on unemployment insurance, withholding taxes, social security, or other industrial, labor or discrimination law for its employees. **RAFTELIS** is responsible for its agents, sub-consultants, methods, and operations.

13. Notices: Any notice required to be given under this Agreement to either party to the other shall be sufficient if addressed and mailed, certified mail, postage paid, delivery, e-mail or fax (receipt confirmed), or overnight courier.

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

15. Termination: This Contract may be terminated by the City of Fayetteville or **RAFTELIS** for any reason with thirty (30) days written notice. If either party breaches this agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to remedy the breach. On termination of this agreement, the City shall pay **RAFTELIS** for the services performed through the date of termination within thirty (30) days of acceptance of final invoice.

16. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees. No modification of this contract shall be binding unless made in writing and executed by both parties.
17. Applicable Law: This Agreement shall be governed by and construed in accord with the laws of the State of Arkansas. Venue for all legal disputes shall be Washington County, Arkansas.
18. Contract Administration: The Mayor or their Designated Representative shall be the Contract Administrator for this contract. **RAFTELIS's** Principal or their Designated Representative shall be the primary contact for all matters pertaining to this contract.
19. Professional Responsibility: **RAFTELIS** shall exercise reasonable skill, care, and diligence in the performance of services and will carry out its responsibilities in accordance with customarily accepted professional practices.
20. Permits & Licenses: **RAFTELIS** shall secure and maintain any and all permits and licenses required to complete this Contract.
21. Publications: Recognizing the importance of professional development on the part of **RAFTELIS's** employees and the importance of **RAFTELIS's** public relations **RAFTELIS** may prepare publications, such as technical papers, articles for periodicals, promotional materials, and press releases, in electronic or other format, pertaining to **RAFTELIS's** services for the Project. Such publications will be provided to City of Fayetteville in draft form for City of Fayetteville's advance review. City of Fayetteville shall review such drafts promptly and provide City of Fayetteville's comments to **RAFTELIS**, City of Fayetteville may require deletion of proprietary data or confidential information from such publications, but otherwise City of Fayetteville will not unreasonably withhold approval. Approved materials may be used in a variety of situations and do not require additional review or approval for each use. The cost of **RAFTELIS's** activities pertaining to any such publication shall be for **RAFTELIS's** account.
22. Entire Agreement: These Contract documents constitute the entire agreement between the City of Fayetteville and **RAFTELIS** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **RAFTELIS**. In the event of a conflict between the terms of this Contract and the appendices, this Contract and the terms and conditions contained in Appendix B shall control.
23. Force Majeure: Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic, or any other cause beyond the reasonable

control or contemplation of either party. Nothing herein relieves the City of its obligation to pay **RAFTELIS** for services actually rendered.

24. Severability: In the event that any court of competent jurisdiction shall determine that any provision of this agreement shall be unenforceable, then that provision shall be deemed to be null and void and the remaining provisions hereof shall remain in full force and effect.

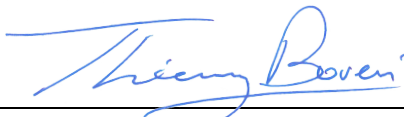
25. Debarment Certification: **RAFTELIS** hereby provides debarment/suspension certification indicating compliance with the below Federal Executive Order. Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. **RAFTELIS** hereby attests its principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

IN WITNESS WHEREOF, **CITY OF FAYETTEVILLE, ARKANSAS** by and through its Mayor, and **RAFTELIS FINANCIAL CONSULTANTS, INC.** by its authorized officer has made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

RAFTELIS FINANCIAL CONSULTANTS, INC.

By: _____
LIONELD JORDAN, MAYOR

By:  _____
THIERRY BOVERI, VICE PRESIDENT

ATTEST:

By: _____
Kara Paxton, City Clerk

Date Signed: _____

Date Signed: 7/25/24 _____

CONTRACT FOR PROFESSIONAL SERVICES
RFP 24-08, Recycling & Trash Collection Rate Study
APPENDIX A
Scope of Work & Fees

1. OVERVIEW:

Raftelis Financial Consultants, LLC. (Raftelis or Consultant) shall provide services in conducting a Rate Study for the City of Fayetteville's Recycling and Trash Collection Division. The study shall include an assessment of our existing operations, to include at a minimum, an analysis of the City of Fayetteville's Recycling and Trash Collection user characteristics, a review of the City's current collection equipment, review of the City's current collection routes and timing, make recommendations for refinements and modifications to the collections system and provide feasibility level cost estimates for implementation of said recommendations.

2. SCOPE OF WORK:

The study performed by **Raftelis** shall address the following objectives:

- A. Compare current recycling and trash collection service costs (operations, and capital improvement needs) against appropriate industry benchmarks.
- B. Recommend baseline rate structures required to guarantee the sustainability of the City's recycling and trash services and provide for collection equipment upgrade and maintenance.
- C. Evaluate collection of:
 - i. Material by Program;
 - 1. Curbside recyclables
 - 2. Apartment recyclables
 - 3. Commercial recyclables
 - 4. Residential solid waste
 - 5. Commercial solid waste
 - 6. Industrial solid waste
 - 7. Yard waste
 - 8. Food Waste
 - ii. Bulk item pick up program
 - iii. Transfer station operation
 - iv. Recycling center operation
 - v. Hauling and disposal of all waste
 - vi. Marketing and processing of recyclables
 - vii. Composting program
 - viii. Franchise fees collection and administration

- ix. Planned capital improvements
 - x. Additional capital needs
 - xi. Operations and administration program
 - xii. Additional positions
- D. Recommendations shall also consider annual inflationary and indexed adjustments that address the overall policy direction outlined herein.
- E. The study is to be performed in conformance with the following policy directions:
- i. The recommended rate structures shall be based on cost of service and shall be sufficient to meet the current and future revenue requirements of the City of Fayetteville's Recycling and Trash Division.
 - ii. The study shall recommend rate structures that consider and make provisions for the following factors:
 - 1. Achieving the goals outlined in the Recycling and Trash Collection Master Plan adopted in February 2017
 - 2. Current and future estimated costs to provide solid waste services in accordance with established and anticipated standards and regulations in addition to the adopted Solid Waste Reduction, Diversion, and Recycling Master Plan
 - 3. Projected demands
 - 4. Age and condition of fleet
 - 5. Funding requirements for future facility and equipment upgrades
 - 6. Changes in collection methods
 - iii. The recommended rate structures shall provide direct identification of revenues appropriated to major funded activities and infrastructure.
 - iv. The study shall provide at least two (2) recommended rate alternatives for solid waste services based upon standard rate practice that meet the criteria outlined above. The consultant will make recommendations as to which alternative best meets the criteria.
 - v. The benefits of any proposed modifications shall be weighed against the financial impacts on rate payers.
 - vi. Justification of differences in proposed rate structures for different classes of customers shall be provided.
 - vii. The recommended rate structures shall result in no decrease in stability of the revenue stream, as compared to the current structure. Consideration shall be given to funding past and future depreciation such as the necessary replacement or upgrade of facilities/equipment.
 - viii. The recommended rate structures shall be easy to administer and understand and shall be fully compatible with the City's existing billing system.
 - ix. The recommended rate structure shall be provided through the next five (5) years.
- F. In making rate structure recommendations, the final report shall explicitly include the following elements and analysis for the provided solid waste services:

- i. Current Rate Structure – Assess the current rate structure’s performance as a baseline for comparing and justifying recommended changes.
- ii. Equity – Assess the equity of recommended rate structures for all types of property ownership and user classes.
- iii. Sensitivity Analysis – Assess the ability of the revenue stream generated by the recommended rate structures to continue to fully fund recycling and trash collection service costs. Include a sensitivity analysis where the long-term revenue generated under each alternative shall be illustrated when confronted with the impacts of growth or increased demand.
- iv. Rate Payer Education and Communication – Recommend methods for communicating utility costs, including utility bill layout and how it might be used to identify actual costs of providing recycling and trash collection services.
- v. Annual Enterprise Fund Balance Targets
- vi. Annual Target Contingency Fund Balances and Level of Liquidity
- vii. Budgeting Horizon and Cycle – Assess the appropriate budgeting horizon and cycle needed to support recommended rate structures.
- viii. Comprehensive Summary of Recommended Rate Structures – Asses the performance of each recommended rate structure over time and provide recommendations on the preferred rate structure.
- ix. Supporting Data – Provide data supporting conclusions and observations made for each of the areas above and cite within the study.

3. PRICING:

- A. **Raftelis Financial Consultants, LLC.** shall perform the services included in this proposal for a not-to-exceed fee of \$111,858.00 (104,585.00 for Scope of Work in RFP and \$7,000.00 allowance for travel expenses).
 - i. RAFTELIS shall strive to make decisions based on what is best for the City. As such, the RAFTELIS compensation is structured as a not-to-exceed fee, with billing to be completed on a monthly basis until completion of project. Monthly invoice shall include a breakdown of completed tasks and/or deliverables for the previous month.
- B. Additional services requested that fall outside the scope of this project shall be provided on a time-and-materials basis, subject to pre-approval utilizing the hourly billing rates below (rates will increase 3% annually, if applicable):

RAFTELIS RATES

POSITION	HOURLY BILLING RATE*
Executive Vice President	\$375
Vice President	\$340
Senior Manager	\$305
Manager	\$270
Senior Consultant	\$240
Consultant	\$210
Associate	\$175
Technology Charge**	\$10

KCI RATES

POSITION	HOURLY BILLING RATE*
Principal	\$245
Director	\$190
Senior Consultant	\$170

4. TIMEFRAME & PROPOSED SCHEDULE:

A. Any adjustments to proposed schedule shall be coordinated through City staff:

TASKS	2024						
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7 - 9
Task 1. Project Initiation and Operational Assessment	● ●		● ●				
Task 2. Financial Model Revenue Requirements Forecast Development			● ● ● ●	● ● ● ●	● ● ● ●		
Task 3. Cost of Service and Rate Design					● ● ● ●	● ● ● ●	
Task 4. Reporting and Presentation						● ● ● ●	● ● ● ●

- In-person Meetings
- Web Meetings
- Deliverables
- Draft Report
- Final Report



CITY OF
FAYETTEVILLE
ARKANSAS

RFP 24-08 Addendum 3

Raftelis

Raftelis Financial Consultants, Inc.

Supplier Response Study

Event Information

Number: RFP 24-08 Addendum 3
Title: Recycling and Trash Collection Rate Study
Type: Request for Proposal
Issue Date: 3/17/2024
Deadline: 4/16/2024 02:00 PM (CT)
Notes: The City of Fayetteville, Arkansas, is now accepting proposals from qualified firms for services required to complete a comprehensive cost of service/rate study for the Recycling and Trash Collection Division of the City of Fayetteville. Any questions regarding this solicitation process shall be directed to Amanda Beilfuss, City of Fayetteville Sr. Purchasing Agent at abeilfuss@fayetteville-ar.gov or (479) 575-8220.

Contact Information

Contact: Amanda Beilfuss
Address: Purchasing
Room 306
City Hall
113 West Mountain Street - Room 306
Fayetteville, AR 72701
Email: abeilfuss@fayetteville-ar.gov

Raftelis Information

Address: 227 W. Trade Street
Suite 1400
Charlotte, NC 28202
Phone: (704) 373-1199

By submitting your response, you certify that you are authorized to represent and bind your company.

Thierry Boveri

Signature

Submitted at 4/16/2024 01:33:06 PM (CT)

tboveri@raftelis.com

Email

Requested Attachments

RFP 24-08, Recycling and Trash Collection Rate Study

Raftelis Proposal.pdf

Please attach the signed and completed RFP form, located in the 'Attachments' tab, along with proposal.

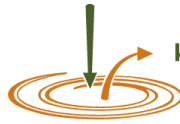
Bid Attributes

1

Addendum Acknowledgement

By selecting "I agree", you acknowledge that you have read all addendum(s) that have been issued for this solicitation, if applicable.

☒ I agree



City of Fayetteville

Recycling and Trash Collection Rate Study

RFP 24-08 / APRIL 16, 2024



April 16, 2024

Ms. Amanda Beilfuss
Senior Purchasing Agent
City of Fayetteville
113 W. Mountain, Room 306
Fayetteville, AR 72701

Subject: Proposal for Recycling and Trash Collection Rate Study (RFP 24-08)

Dear Ms. Beilfuss:

Raftelis Financial Consultants Inc. (Raftelis) and Kessler Consulting Inc. (KCI) are pleased to submit this proposal to assist the City of Fayetteville (City) Department of Public Works' Recycling and Trash Collection Division (RTC) with a Recycling and Trash Collection Rate Study (Study). The primary aim of this evaluation is to recommend operational improvements to the collection system and implement rates that fairly recover costs while supporting the financial sustainability of the enterprise fund. We believe that leveraging the combined strengths of Raftelis and KCI will provide the City with the most effective project team to accomplish its specific study goals and further advance broader objectives such as the City's Climate Action Plan waste diversion goals.

Established in 1993, Raftelis has grown to become the largest water, wastewater, solid waste, stormwater, and electric utility rate and management consultancy in the country with over 170 consultants. Our mission is dedicated to assisting our clients in achieving financial viability to help ensure success in their mission and objectives. We are dedicated to staying at the forefront of industry trends and best practices through our belief in continual learning and contribution within industry trade organizations such as the Solid Waste Association of North America (SWANA). With a track record of assisting over 1,700 utilities nationwide, our approach is grounded in extensive experience and a deep understanding of the unique challenges facing municipal services.

Founded in 1988 with the sole focus of generating innovative, sustainable solid waste, recycling, and organic management solutions that improve our environment, KCI brings extensive experience in strategic planning and optimization for solid waste collection operations. With significant local and regional institutional knowledge, KCI has led or participated in several studies, including the City's *Solid Waste Reduction, Diversion, and Recycling Master Plan*, as well as the Boston Mountain and Benton County Solid Waste District (BMSWD) *Northwest Arkansas Regional Waste Reduction & Recycling Master Plan*.

To ensure the City's needs are met with the utmost expertise, our project team leaders will include Mr. Thierry Boveri, Vice President with Raftelis, serving as the Project Manager with approximately 20 years of expertise in solid waste cost-of-service engagements and Mitch Kessler as the collection operational assessment lead with approximately 39 years of solid waste consulting experience. Raftelis and KCI have a successful past track record of effective collaboration and teamwork through overlapping engagements including several financial and planning engagements including: Hillsborough County Florida, Manatee County Florida, Sarasota County Florida, Fort Pierce Utility Authority Florida, and Oakland Park Florida.

Following this letter, we have attached our proposal which documents our respective firm profiles, project team, qualifications and references, and project approach. We are proud of the resources that we can offer to the City of Fayetteville, and we hope for the opportunity to be of assistance on this engagement.

Sincerely,



Thierry Boveri, CGFM

Vice President

P: 407.628.2600

E: tboveri@raftelis.com

RFP 24-08, RTC Rate Study
Appendix B
Raftelis Proposal



Diversity and inclusion are an integral part of Raftelis' core values.

We are committed to doing our part to fight prejudice, racism, and discrimination by becoming more informed, disengaging with business partners that do not share this commitment, and encouraging our employees to use their skills to work toward a more just society that has no barriers to opportunity.



Raftelis is registered with the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) as a Municipal Advisor.

Registration as a Municipal Advisor is a requirement under the Dodd-Frank Wall Street Reform and Consumer Protection Act. All firms that provide financial forecasts that include assumptions about the size, timing, and terms for possible future debt issues, as well as debt issuance support services for specific proposed bond issues, including bond feasibility studies and coverage forecasts, must be registered with the SEC and MSRB to legally provide financial opinions and advice. Raftelis' registration as a Municipal Advisor means our clients can be confident that Raftelis is fully qualified and capable of providing financial advice related to all aspects of financial planning in compliance with the applicable regulations of the SEC and the MSRB.

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FIRM OVERVIEW

Who is Raftelis

HELPING LOCAL GOVERNMENTS AND UTILITIES THRIVE

Local government and utility leaders partner with Raftelis to transform their organizations by enhancing performance, planning for the future, identifying top talent, improving their financial condition, and telling their story. We've helped more than 700 organizations in the last year alone.

General Information

Firm Name: Raftelis Financial Consultants, Inc. (DBA Raftelis)

Address of Firm: 341 N. Maitland Ave, Maitland FL 32751

Years in Business: 31 years

Other Names: Raftelis is a subchapter S-Corporation incorporated in the state of North Carolina on April 23, 2004. The predecessor to Raftelis, Raftelis Environmental Consulting Group, Inc., was established on May 10, 1993 by George A. Raftelis to provide financial and management consulting services of the highest quality to public-sector clients. In 1999, the firm's name was changed to Raftelis Financial Consulting, PA. Following the sale of a portion of the firm to a group of employees on April 22, 2004, the firm's name changed to Raftelis Financial Consultants, Inc., which remains the firm's legal name. We currently do business as Raftelis.

Current Insurance: Please see the following page for a copy of our insurance coverage.

OUR SUBCONSULTANT

Kessler Consulting, Inc.

Kessler Consulting, Inc., (KCI) is a national leader in solid waste management planning and program implementation. Their experience developing strategic, practical, and sustainable programs and recommendations from operational analyses across the United States is unparalleled. Throughout our 36-year history, KCI has worked on over 1,000 projects for more than 350 clients in 37 states and 10 countries. With their corporate office in Florida, and satellite offices in North Carolina, Maine, Pennsylvania and Puerto Rico, KCI has helped clients remain on the leading edge of solid waste collection, recycling, composting, waste reduction, and environmental stewardship.

KCI is committed to developing environmentally sound and economically viable solutions for our clients that include innovative and realistic solid waste management strategies and technologies. Their results-oriented service has solidified KCI's position as a top solid waste planning and management consulting firm in the Southeastern United States and nationally.

Client#: 1722483

RAFTEFIN

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/11/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Svcs, Charlotte 6100 Fairview Road Ste 1400 Charlotte, NC 28210 800 868-8834		CONTACT NAME: Brad Christensen PHONE (A/C, No, Ext): - FAX (A/C, No): E-MAIL ADDRESS: brad.christensen@usi.com															
INSURED Raftelis Financial Consultants, Inc. 227 West Trade Street, Ste. 1400 Charlotte, NC 28202		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : National Fire Insurance Co. of Hartford</td> <td>20478</td> </tr> <tr> <td>INSURER B : Continental Insurance Company</td> <td>35289</td> </tr> <tr> <td>INSURER C : American Casualty Company of Reading PA</td> <td>20427</td> </tr> <tr> <td>INSURER D : Beazley Insurance Company, Inc.</td> <td>37540</td> </tr> <tr> <td>INSURER E : Travelers Casualty & Surety Co. of Amer</td> <td>31194</td> </tr> <tr> <td>INSURER F : Continental Casualty Company</td> <td>20443</td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : National Fire Insurance Co. of Hartford	20478	INSURER B : Continental Insurance Company	35289	INSURER C : American Casualty Company of Reading PA	20427	INSURER D : Beazley Insurance Company, Inc.	37540	INSURER E : Travelers Casualty & Surety Co. of Amer	31194	INSURER F : Continental Casualty Company	20443
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:			6076000011	01/21/2024	01/21/2025	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$ \$
F	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY			BUA6076000025	01/21/2024	01/21/2025	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☒ OCCUR ☐ CLAIMS-MADE DED ☒ RETENTION \$10000			CUE6076000039	01/21/2024	01/21/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC6076305637 WC6076000042	01/21/2024 01/21/2024	01/21/2025 01/21/2025	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Cyber			W314D6240201	01/21/2024	01/21/2025	\$5,000,000 Limit
E	Crime			107207373	01/21/2024	01/21/2025	\$1,000,000 Limit
F	Professional			652071235	01/21/2024	01/21/2025	\$5,000,000 Limit

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is included as an Additional Insured with respect to General Liability, Automobile and Umbrella will follow form as per written contract. The coverage afforded to the Additional Insured is on a Primary and Non-Contributory basis for General Liability, Automobile and Umbrella if required by written contract. Waiver of Subrogation applies to General Liability, Automobile, Workers Compensation and Umbrella policies in favor of the above listed Additional Insured per written contract. A 30 day notice of (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

To Whom it May Concern	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Paula B. Bulman</i>

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ACORD 25 (2016/03) 1 of 2
#S43320554/M43288916

The ACORD name and logo are registered marks of ACORD

SGSZR

We believe that Raftelis is the *right fit* for this project. We provide several key factors that will benefit Palo Alto and help to make this project a success.

RESOURCES & EXPERTISE: This project will require the resources necessary to effectively staff the project and the skillsets to complete all of the required components. With more than 170 consultants, Raftelis has the largest utility-industry financial and management consulting practice in the nation, including many of the industry's leading rate consultants and experts in key related areas, like stakeholder engagement and data analytics. Our depth of resources will allow us to provide the City with the technical expertise necessary to meet your objectives.

DEFENSIBLE RECOMMENDATIONS: When your elected officials and customers are considering the validity of recommended changes, they want to be confident that they were developed by experts using the latest industry standard methodology. Our staff are involved in shaping industry standards by serving as a board of director and chairing committees within the Solid Waste Association of North America and co-authoring many industry-standard books regarding utility finance and rate setting. Being so actively involved in the industry will allow us to keep the City informed of emerging trends and issues and to be confident that our recommendations are insightful and founded on sound industry principles. In addition, with Raftelis' registration as a Municipal Advisor, you can be confident that we are fully qualified and capable of providing financial advice related to all aspects of utility financial planning in compliance with federal regulations.

HISTORY OF SIMILAR SUCCESSES: An extensive track record of past similar work will help to avoid potential pitfalls on this project and provide the know-how to bring it across the finish line. Raftelis staff has assisted 1,000+ utilities throughout the U.S. with financial and rate consulting services with wide-ranging needs and objectives. Our extensive experience will allow us to provide innovative and insightful recommendations to Palo Alto and will provide validation for our proposed methodology ensuring that industry best practices are incorporated.

USER-FRIENDLY MODELING: A modeling tool that your staff can use for scenario analysis and financial planning now and into the future will be key for the City going forward. Raftelis has developed some of the most sophisticated yet user-friendly financial/rate models available in the industry. Our models are tools that allow us to examine different policy options and cost allocations and their financial/customer impacts in real time. We offer model options including Microsoft Excel-based and web-based tools that are developed with the expectation that they will be used by the client as a financial planning tool long after the project is complete.

RATES THAT ARE ADOPTED: For the study to be a success, rates must be successfully approved and implemented. Even the most comprehensive rate study is of little use if the recommendations are not approved and implemented. Raftelis has assisted numerous agencies with getting proposed rates successfully adopted. We focus on effectively communicating with elected officials about the financial consequences and rationale behind recommendations to ensure stakeholder buy-in and successful rate adoption.



How we stack up

OUR TEAM INCLUDES

170+ consultants focused on finance/management/communication/technology for the public sector

2 chairs & **16** members of AWWA and WEF utility finance and SWANA management committees and subcommittees

& a Past President of AWWA and SWANA Board of Directors

RAFTELIS HAS PROVIDED ASSISTANCE FOR

1,700+ public agencies and utilities

that serve more than

25% of the U.S. population

including the agencies serving

41 of the nation's 50 largest cities

in the past year alone, we worked on

1,300+ projects for **700+** agencies in **47** states

INDUSTRY KNOWLEDGE

Knowledge of Applicable Regulations and Local Conditions

Our proposed project team and in particular, KCI, will bring to bear their extensive knowledge of local conditions. As previously noted, KCI prepared the City's 2016 solid waste master plan which required, among other things, developing a thorough understanding of the local regulatory environment and understanding of key challenges facing the City and region such as the need to improve on landfill diversion goals and recycling processing infrastructure. KCI also played a critical role in developing the *Northwest Arkansas Regional Waste Reduction & Recycling Master Plan* on behalf of the Boston Mountain Region and Benton County Solid Waste District (BMSWD). KCI completed a *Recycling and Transfer Facility Assessment, Conceptual Design, and Cost Estimate* for the City and continues to provide on-call support. Additionally, KCI has been retained by BMSWD to perform an Operations Analysis and Waste Characterization Study for the region, which will include characterization of the City's MSW. Please reference KCI project experience for more detail concerning these engagements.

All together, KCI's extensive and ongoing work with the City and region provide unparalleled knowledge and understanding that will help ensure insightful analysis and recommendations to help guide the City to achieving its service delivery, waste diversion, and climate change goals in a financially sustainable and equitable manner.

Appendix B Rate Study
RFP 24-08, RTC
Raftelis Proposal

PROJECT APPROACH

Project Understanding

The City of Fayetteville is seeking proposals to perform a Recycling and Trash Collection Rate Study that will include an evaluation of the current collection operations. The primary aim of this evaluation is to recommend operational improvements to the collection system and implement rates that fairly recover costs while supporting the financial sustainability of the enterprise fund. A key area of focus will be to evaluate potential changes or enhancements to the City's collection operations in order to support the broader objectives and recommendations as adopted in the 2017 Master Plan and 2018 Climate Action Plan.

Project Approach

Our project approach is structured around two (2) primary parallel activities with the performance of an operational assessment of the collection system and the development of a ten (10) year financial and cost-of-service model. Ultimately, the product of this work effort will result in what can be described as a "mini masterplan" through the evaluation of three (3) overall system options including: a) the continuation of the "status quo" assuming the current collection operations and service levels are maintained; and b) up to two (2) possible collection system alternatives that we would develop with staff input that could be more focused around advancing the City's past master plan, waste diversion, and Climate Action Plan goals.

The collection system assessment will be led primarily by KCI and include a review of the collection equipment, route requirements, and development of planning level cost estimates of alternatives selected in consultation with the City that will ultimately form the basis of the operational assessment recommendations. The assessment will include field visits and collection system ride-along to help inform collection system recommendations. As part of the operational assessment, we have included allowances for the evaluation of up to three (3) options and planning level cost estimates for operations including the current operations or "status quo" and two (2) collection system operations alternatives. This effort will consider the current and future collection system needs of the City and explore how changes to collection operations can further advance the City's objectives towards increased diversion.

The financial model and cost-of-service efforts will be primarily led by Raftelis and include the development of a dynamic decision support model of the City's collection operations to facilitate working sessions with City / RTC staff. The model will have the capability of adjusting the number of customers by class and service, waste generation, waste diversion, collection routes, labor and vehicle requirements, among other factors, to support decision making around the benefits and costs related to each of the up to 3 operational scenarios under consideration. The model will allow for sensitivity testing of each option with the corresponding effects on the City's financial condition (e.g., cashflows and reserve balances) and rates.

Our work efforts will culminate in the development of a detailed report documenting the study approach, key assumptions, findings, and recommendations. Once staff has reviewed the draft report, the project team will then present the study findings and recommendations to key stakeholders, including the Mayor and City Council. Council input will be considered and incorporated into the final report and recommendations.

Task 1: Project Initiation and Operational Assessment

This task relates to project management, data collection, and operational assessment. The task will be initiated with a virtual meeting to broadly discuss the project objective and address project management protocols. This will lead into an on-site workshop with staff to better identify the key issues and areas of concern for the study. The on-site workshop will be performed concurrent with the necessary field work to support the operational assessment. The work effort will conclude with a virtual presentation of key findings and recommendations, as well as outline the options or scenarios that will be evaluated in development of the feasibility level cost estimation and financial plan formulation.

Task 1.1: Preliminary Virtual Kick-off Meeting

A productive kick-off meeting is the most effective way to begin a project of this nature. Prior to the kick-off meeting, we will submit a data request with the information needed to complete the study. This will include financial information, operational data, billing data, key agreements for service, debt service schedules, existing rate models and studies, etc. We have proposed a virtual kick-off meeting and the goals for this meeting include:

- Providing a forum to finalize the work plan and schedule with City staff
- Establish the cadence for periodic study check-ins and primary points of contact
- Confirm the study goals, objectives, and timeline with City staff
- Discuss and review the data needs for the project
- Discuss any general areas of concern or issues related to the study
- Discuss any rate design goals and objectives (e.g., review or enhance PAYT structure)
- Discuss and formalize field work necessary for the performance of the operational assessment

DELIVERABLES:

- Data request and kick-off meeting agenda

MEETINGS:

- Meeting 1 – Virtual project kick-off meeting

Task 1.2: On-site Workshop

This task will be performed concurrently with Task 1.3. The workshop purpose of the workshop will be to facilitate open dialogue with City staff concerning the key collection system issues and potential operational changes that the project team will explore as part of our evaluation. This workshop will include:

- Background / operating environment overview of RTC operations
- Discussion of the current challenges and opportunities
- Specific areas of focus for the operational study
- Final coordination of on-site field work as needed

DELIVERABLES:

- Workshop agenda

MEETINGS:

- Meeting 2 – On-site Workshop

Task 1.3: Conduct Operational Assessment

KCI will conduct a three-day on-site assessment of City-provided collection operations, which we anticipate will include the following activities:

- Conduct field-level observations, ride-a-longs on selected collection routes, targeted audits of route performance (e.g., time and motion data on segments of selected routes), and interviews with collection and management staff. This work will cover all City collection services by customer and service class (e.g., residential, multi-family, and commercial) and material types (e.g., recyclables, yard waste, food waste, solid waste, and bulk items).
- Review routes for length, efficiency, and impacts on overall operations.
- Organizational chart, administrative staff responsibilities, collection staff service and route assignments, and labor hour reports.
- Vehicle inspection procedures, maintenance and repair services, and aging and replacement schedule.
- Assess current on-board and information technology for tracking collection operations, customer service verification, vehicle performance, and safety as well as responding to service and dispatch requests.
- Discuss with staff the findings from recently conducted facility assessments and perform additional, targeted work as required to support this project.
- Review procedures for handling on-call services, excessive volume, and code violations.
- Identify program components and options that could potentially lower costs, improve service delivery, optimize collection routes, improve operational efficiency and productivity, and/or increase materials recovery rates related to existing services.
- Identify potential tools and performance metrics to assist in measuring improvement progress.

At the conclusion of this work effort, KCI will develop key performance metrics for each collection service (e.g., route size, recycling set out rate, stops per hour, tons per worker hour, fleet replacement, and others) and benchmark the City's services against industry standards and ranges. KCI will also identify unique local conditions that impact City's service performance metrics to provide context for the benchmarking comparisons. KCI will develop a summary of key findings and preliminary recommendations for consideration. Raftelis and KCI will participate in a virtual meeting with staff to discuss the findings and finalize the collection method options that will be evaluated in development of the feasibility level cost estimation and financial plan formulation.

DELIVERABLES:

- Three-day on-site assessment
- Key Findings Memorandum

MEETINGS:

- Meeting 3 – Virtual Meeting to Discuss Key Findings with Staff

Task 2: Financial Model Revenue Requirements Forecast Development

Task 2.1: Historical and Forecasted Customer/Tonnage and Route Statistics

The project team will evaluate and analyze a minimum of three to five years of historical solid waste user characteristics including billing data, waste deliveries by customer class, type, and quantity (weight or volume), and routing operational data (# of vehicles, pickups per route day, etc.). Based on the analysis of historical trends, Raftelis will develop a multi-year forecast comprising up to ten years (Forecast Period) of customer, waste generation, and routing statistics which will be used to forecast operating revenues and expenses of the Fund.

This task will include recognition of growth from new development as identified by City staff to aid in identifying customer and rate impacts as part of future tasks.

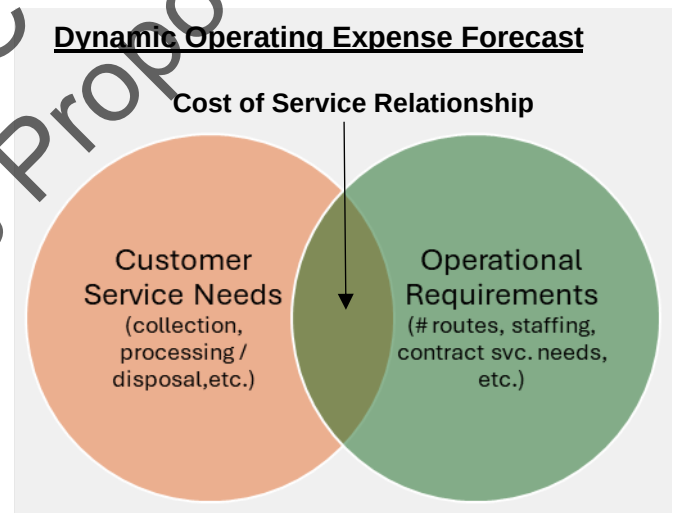
Task 2.2: Preparation and Validation of the Revenue Forecast

Utilizing projections from Task 2.1, Raftelis will develop revenue projections under existing rates. This task will include a revenue test to validate the revenue model by comparing calculated revenues for the most recently completed historical year relative to audited and reported revenues. This task will include recognition of incremental revenues from new development as identified by City staff.

Task 2.3: Operating Expense Forecast and Allocation by Service

Raftelis will summarize and analyze three to five years of historical operating expenses by cost center function and by line item within each cost center. The historical evaluation will be used to identify trends in expenses. The current operating expense budget will serve as the baseline for the forecast and may be adjusted based on historical trends as would be discussed and confirmed with staff. Generally, the projection of operating expenses will be escalated from the base year recognizing: i) historical trends in such costs; ii) indexing provisions related to contract operations (if applicable); iii) assumed escalation in costs based on the cost drivers such as number of customers, collection routes, waste generation, and/or other factors; and iv) possible changes in operations (e.g., additional personnel, new contract, new services, changes in operations, etc.).

We understand that the City's operations can change or evolve over time due to changes in waste generation and diversion associated with implementation of the City's waste diversion goals. We would propose developing a series of supporting work papers to adequately forecast and model costs based on the key dynamic relationship among your operations and the service requirements of your customers. For example, changes in routing operations requires the ability to change expected labor, vehicle, maintenance, and fuel requirements. In this way as we revise assumptions of collection service requirements or waste diversion, we capture the proportional and corresponding change in projected operating expenses. We typically try and model all key dynamic relationships, as well as attempt to factor other incremental changes in costs. Ultimately our goal is to develop a digital financial twin of your solid waste operations, which we believe adds value through the insights garnered from understanding the dynamic relationship of customer needs, operational requirements, and cost of service.



Once the costs are forecasts and if not already allocated by the City through the budget process, Raftelis will work with staff to assign costs among the various programs or services of RTC using industry-accepted cost allocation practices.

The following services identified pursuant to the RFP and the past rate study will serve as the minimum basis of cost allocation:

Management, Billing, & Administration	
Collection	
Automated Refuse	Commercial Container Refuse
Curbside Recycling	Apartment Recycling
Commercial Recycling	Curbside Yard Waste
Bulky Collection	Dropbox Collection
Food Waste Pilot	Glass Pilot
Recycling Drop-Off	
Facilities / Disposal	
Transfer Station	Recycling Processing Facility
Compost Facility	

Task 2.4: Development of the Capital Improvement and Equipment Program

If the City does not already have a forecast of capital needs for the system, we will work with City staff to review the City's applicable fleet and fixed asset records by age, type, and condition (if available) to support a desktop evaluation of the near-term capital needs. We will work with staff to develop a forecast of the associated capital and equipment needs. The evaluation will consider potential changes in operations and new capital as well as previously identified capital needs pursuant to City-adopted capital plan. We will review the City's capital improvement plans to understand projects scopes, budgets, and fact sheets. We will discuss the projects with staff to understand details, confidence in project budgets, risk identification, and if projects will achieve the desired outcomes. We will then allocate expenditures by service or program type, and identify the corresponding funding sources for each project or capital expenditure.

This task will include feasibility level cost estimates as developed by KCI for the 3 collection system operations under consideration.

Task 2.5: Other Revenue Requirements and Recommended Reserve Targets

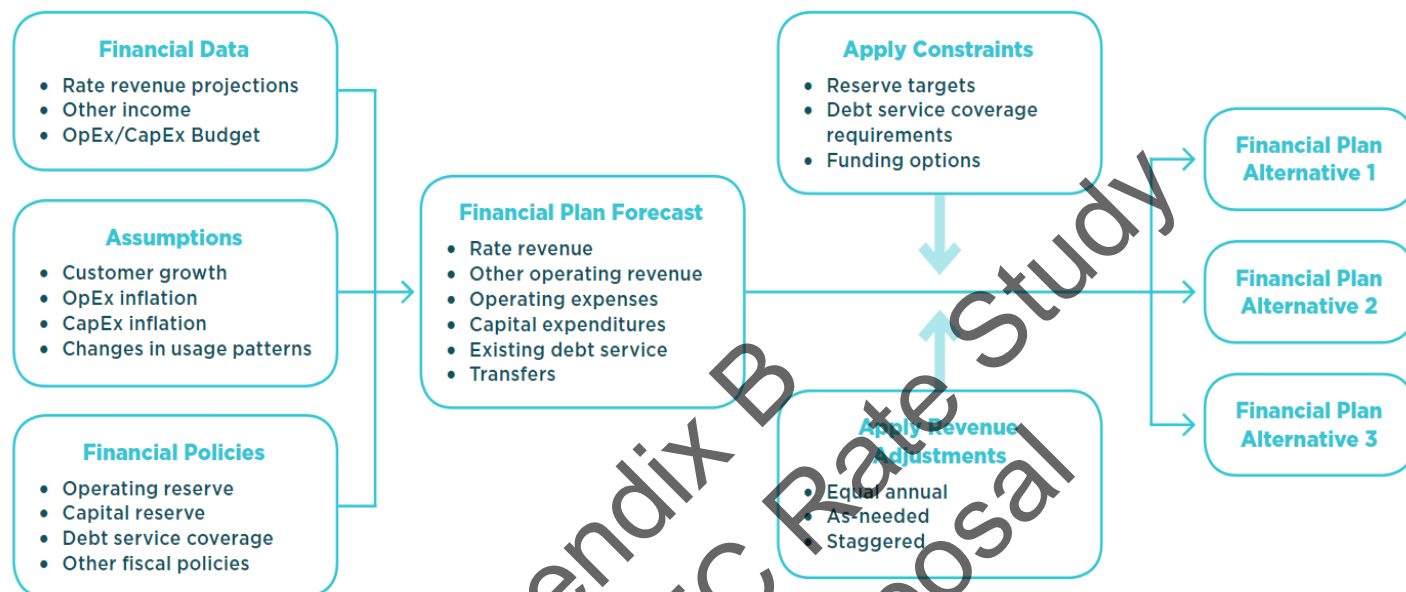
This task involves identifying: i) any debt service or capital lease requirements (if applicable) and compliance requirements (e.g., loan agreements/debt service coverage); ii) required deposits for maintaining reserve targets and future capital funding needs; and iii) other funding requirements associated maintaining minimum financial performance metrics.

Raftelis will work with staff to identify and recommend minimum cash reserve balances to meet the objectives of the City, which may include consideration for operating reserves, long-term liabilities, force majeure events, and/or unexpected capital needs. Our recommendations will be based on a review of the City's solid waste cashflow requirements, Government Finance Officers Association (GFOA) guidance, and credit rating agency guidelines, and other best practices. Our reserve recommendations generally tie to a purpose and a basis for a minimum reserve requirement, accounting for at a minimum operating or working capital reserves, capital reserves, debt service, and potentially other reserve requirements. We will develop these recommendations based on discussions and input with City staff.

Task 2.6: Determination of Revenue Sufficiency

We will develop an “optimal” revenue requirement financial plan balancing a mix of cash funding and debt financing capital projects (if applicable) while meeting reserve targets and debt service coverage requirements while maintaining conservative debt capacity levels and minimizing revenue increases. This balance is subject to the

Financial Planning Process



constraints of meeting the City’s target reserve policies and debt service coverage requirements on any proposed debt. We will calculate annual rate revenue adjustments needed through the study period. The graphic below illustrates the requirements needed to build a sound financial plan.

DELIVERABLES:

- 10-year forecast of revenue requirements with forecasted incremental changes, reserves analysis, and financial plan alternatives. This task will include development of a management dashboard.
- Feasibility level cost estimates

MEETINGS:

- Three (3) Virtual Meetings 4 – 6: To review and discuss key assumptions and findings in the formulation of the projected revenue requirements of the system.



As part of Task 2.6 and if not already developed within the City's current financial model, Raftelis will develop a customized financial model that incorporates a dashboard to allow you to easily run scenarios and see the impacts in real time. Shown here is a sample dashboard that we developed for another project.



Task 3: Cost of Service and Rate Design

Task 3.1: Cost of Service Allocations and Rate Structure Alternatives

Concurrent with Task 2, in development of the revenue requirements, we will work to allocate costs based on the cost causative drivers for collection operations, such as the amount of labor, equipment, time, among other things, for each of the distinct services offered by the City. We will ensure that the cost allocations meet a rational nexus and can be easily explained when communicating needs to stakeholders.

The allocated costs will then be divided by the underlying billing units by service type / level to determine the unit cost of collection. The rate structure alternatives determined with aid of input from City staff during the Task 1 Project Initiation will then be populated using the unit costs in the formation of the proposed rate structure alternatives. This task contemplates the development of several rate structure alternatives as needed for staff's consideration.

Task 3.2: Customer Bill Impact Analysis and Rate Implementation Strategies

Based on the rate structures identified in the prior task, we will develop a comparison of the cost of service to rate recovery under the new rates as well as existing rates. We will work with City staff to develop several rate phasing strategies to minimize impacts to customers from the cost recovery changes. This will allow the City to understand the customer impacts of the proposed rate structure alternatives proposed to address any inequities in the existing rate structure.

DELIVERABLES:

- Three (3) Customer bill impact and rate structure alternatives.

MEETINGS:

- Virtual Meeting 7 – Review cost of service and rate design analysis.
- Virtual Meeting 8 – Present final findings and recommendations to City project team / RTC staff
- Virtual Meeting 9 – Present final findings to City Administration

Task 4: Reporting and Presentation**Task 4.1: Draft Report**

The draft report will include an executive summary highlighting the findings of the operational assessment and financial planning and cost-of-service work efforts. The main body of the report will include an assessment of current services, service area descriptions, an overview of O&M expenses, operational priorities, the capital improvement plan, the financial plan, and the proposed rates. It will also contain a discussion on rate structure selection, rate design assumptions, and methodologies used to develop the rates. The report will provide rate recommendations and alternatives for a five-year planning period. The City will provide comments for incorporation into the final report. The report will serve as the administrative record and will show the nexus between the City's costs and proposed rates.

Task 4.2: Council Public Presentation

Raftelis will make a presentation to the Mayor and City Council during a public meeting. The purpose of this presentation is to present the results of the study and seek input from policy makers regarding any changes to the proposed collection operations and proposed rates. Presentation materials will be provided to City staff for review prior to the presentation.

Task 4.3: Final Report

Raftelis will incorporate all prior City staff and City Council input into the final report.

DELIVERABLES:

- Draft and Final Report
- Presentation for City Council

MEETINGS:

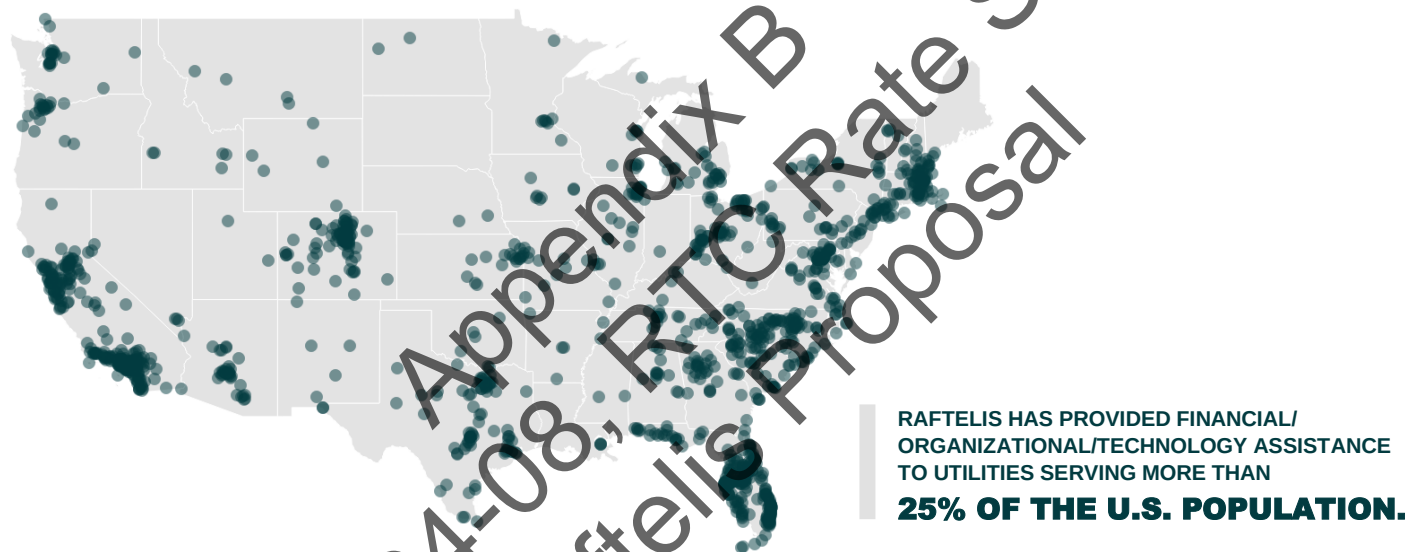
- Virtual Meeting 10 – Discuss Draft Report Comments with Staff
- On-site Meeting 11 – Present findings to the Mayor and City Council

EXPERIENCE

Experience and Performance Records

RAFTELIS HAS THE MOST EXPERIENCED UTILITY FINANCIAL AND MANAGEMENT CONSULTING PRACTICE IN THE NATION.

Our staff has assisted more than 1,700 local government agencies and utilities across the U.S., including some of the largest and most complex agencies in the nation. In the past year alone, Raftelis worked on more than 1,300 financial, organizational, and/or technology consulting projects for over 700 agencies in 47 states, the District of Columbia, and Canada. Below, we have provided descriptions of projects that we have worked on that are similar in scope to the City's project. We have included references for each of these clients and urge you to contact them to better understand our capabilities and the quality of service that we provide.



RAFTELIS REFERENCES

Hillsborough County FL

Reference: Damien Tramel., Solid Waste Management Division Director

P: 813.663.3211 / E: trameld@hcfl.gov

Length of Service: 2005 – Present

Raftelis has prepared a financial forecast and revenue sufficiency analysis and model of the County's Solid Waste Division, which includes both disposal and collection services. The financial forecast and model was prepared to evaluate the current and projected fiscal position, support the development of collection and disposal fee rates for service, and develop a funding plan for ongoing capital re-investment. The financial forecast encompassed a six-year planning horizon. Study tasks have included:

- Compilation of historical solid waste deliveries received by the County, by waste type, and the projection of solid waste tonnage to estimate residential assessment and tipping fee disposal revenues

- Preparation of forecast of residential/dwelling unit, and commercial customer growth, and waste generation rates to estimate solid waste collection revenues as well as the delivery of municipal solid waste to the County disposal facilities
- Projection of electric rate revenues derived from the operation of the waste-to-energy (WTE) facility, recognizing changes in fuel prices, and contractual arrangements for the sale of electricity to other utilities
- Projection of operating expenses, including contractual fees for:
 1. Operation of the landfill and other disposal facilities
 2. Providing collection services by the County's contractors
- Preparation of change in landfill closure and long-term liability for expense recognition and funding considerations
- Development of a capital funding plan
- Developed cost allocation and development of rates based on cost to provide service by customer class, waste type, and service provided (e.g., disposal and residential collection since separately assessed)
- Assisted in development of residential assessment rate resolution and solid waste rate schedules and presentation to Board of County Commissioners
- Providing the rate and financial model for County staff's internal use

Raftelis has annually updated the financial and revenue sufficiency model in support of annual budget process, to review the financial position of the system, and to maintain compliance with the overall business plan adopted by the Board of County Commissioners.

City of Huntsville AL

Reference: Penny Smith, Director of Finance

P: 256.427.5062 / E: penny.smith@huntsvilleal.gov

Length of Service: 2023 – Present

The City of Huntsville, Alabama (City) currently provides trash, residential bulky waste, and storm debris cleanup to approximately 67,400 residential and commercial accounts producing approximately 165,000 tons of waste per year. The City provides these services primarily in-house through their Sanitation Division (Division). The Division's financial operations currently reside within the City's General Fund, and capital and operating costs have been greater than what is collected from its customers as charges for services. However, the Division is in the process of establishing operations as a separate and distinct enterprise fund. To do so, the enterprise fund must set rates sufficient to fully recover the cost of operation. The City has not conducted an independent review of the cost of service for its solid waste operation since 1994. As a result, the City engaged Raftelis to perform a cost of service and financial planning study to provide rate, capital planning, and fiscal policy recommendations to promote financial stability and continuity for the Division's solid waste operation as it transitions out of the General Fund and into its own enterprise fund. The study is currently active and on-going with the goal to take results to City Council at the end of this calendar year.

Oklahoma City Water Utilities Trust **OK**

Reference: Vanessa Aguilar, Business Manager, City of Oklahoma City, Utilities Department

P: 405.297.2825 / E: vanessa.aguilar@okc.gov

Length of Service: 2020 – present

The City of Oklahoma City (City) Water Utilities Trust (OCWUT) provides solid waste collection and disposal services to approximately 645,000 people with contractor-provided collection service to about 60% of the customer base and City in-house provided collection service to about 40% of the customer base. Collection services primarily include refuse, recycling, and bulky waste. The City is also responsible for a number of solid waste programs from neighborhood clean ups, household hazardous waste, rural recycling convenience centers, street sweeping, and others. Raftelis recently assisted the City through the performance of a formal cost-of-service rate study and financial forecast model. A key element of the engagement included: i) providing recommendations concerning rate revenue adjustments over a 10-year period including modeling of fleet replacement and identifying capital needs; ii) providing recommendations concerning the establishment of cash reserves for operating, capital, storm, cart, and other reserves; and iii) identification of the cost of service for several of the City's key services including, bulky waste collection, recycling, illegal dumping and litter collection, and flow fee design. Raftelis assisted the City in modeling cart and fleet replacement cycles. Currently Raftelis is assisting the City in determining the cost of in-housing certain contracted operations.

Lee County **FL**

Reference: Douglass Whitehead, Solid Waste Director

P: 239.533.8917 / E: dwhitehead@leegov.com

Length of Service: 2014 – present

Raftelis has prepared a financial forecast and revenue sufficiency analysis and model of the County's Solid Waste Division, which includes both disposal and collection services. The financial forecast and model were prepared to evaluate the current and projected fiscal position, support the development of collection and disposal fee rates for service, and develop a funding plan for ongoing capital re-investment. The financial forecast encompassed a six-year planning horizon. Study tasks have included:

- Compilation of historical solid waste deliveries received by the County, by waste type, and the projection of solid waste tonnage to estimate residential assessment and tipping fee disposal revenues
- Preparation of forecast of residential/dwelling unit, and commercial customer growth, and waste generation rates to estimate solid waste collection revenues as well as the delivery of municipal solid waste to the County disposal facilities
- Projection of electric rate revenues derived from the operation of the waste-to-energy (WTE) facility, recognizing changes in fuel prices, and contractual arrangements for the sale of electricity to other utilities
- Projection of operating expenses, including contractual fees for:
 - Operation of the landfill and other disposal facilities
 - Providing collection services by the County's contractors
- Preparation of change in landfill closure and long-term liability for expense recognition and funding considerations
- Development of a capital funding plan, including the funding of a landfill replacement reserve (new landfill) for future disposal requirements
- Developed cost allocation and development of rates based on cost to provide service by customer and waste type
- Providing the rate and financial model for County staff's internal use

Raftelis has annually updated the financial and revenue sufficiency model in support of annual budget process, to review the financial position of the system, and to maintain compliance with the overall business plan adopted by the Board of County Commissioners.

City of Wilmington NC

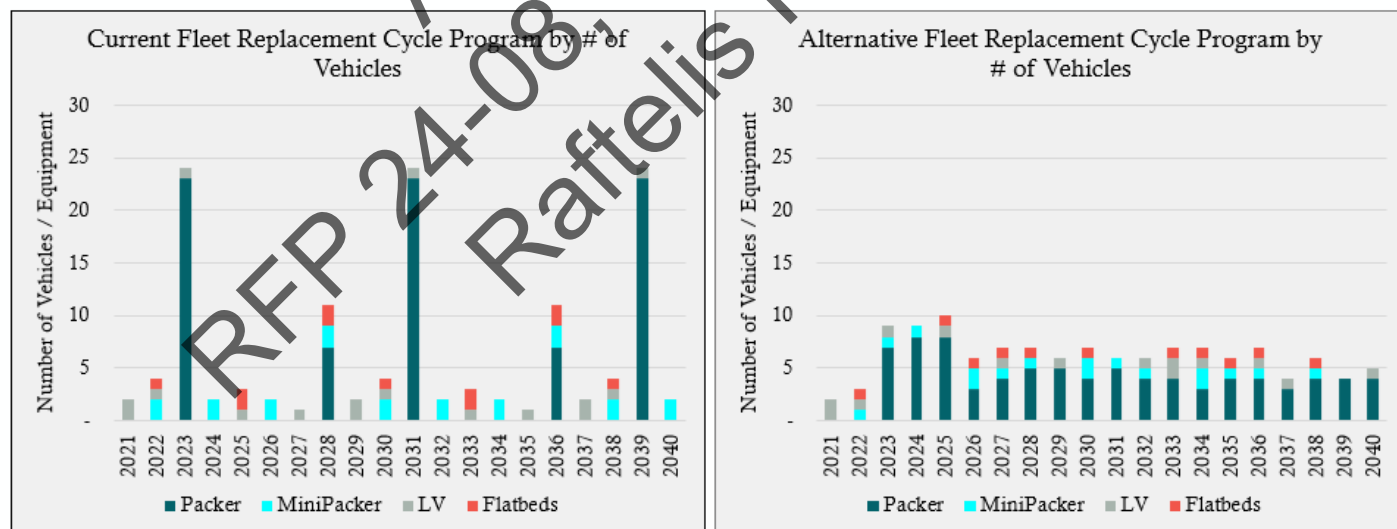
Reference: Rick Porter, MBA MESH, Superintendent of Recycling & Trash Services

P: 910.341.0081 / E: rick.porter@wilmingtonnc.gov

Length of Service: 2021 – present

Raftelis was involved in performing a comprehensive rate study, operational assessment, and collection routing optimization study for the City of Wilmington to ensure the Solid Waste Division is operating efficiently and cost effectively and that the existing charges and fee structure adequately recover the expenses associated with providing service. This effort included developing a 10-year prospective financial model with estimated costs of service for the upcoming fiscal year as well as providing rate recommendations. Additionally, this included performing a full operational assessment and providing recommendations for improvement. Developing the costs of service also required a detailed analysis of the Division's fixed assets, fleet, and future CIP. Performing this analysis provided additional insight into the Division's operations as a whole and provided the basis for final recommendations.

A key finding of the study was to provide recommendations to adjust the City's solid waste collection fees by 4% for the Fiscal Year 2022, which required formal presentation to City stakeholders and City Council. The proposed rate recommendations were unanimously approved. The following provides an excerpt from the dynamic model developed for the City to aid in evaluating changes in the City's fleet replacement cycle.



Charts shown above reflect the fleet module, a component of the financial model, used to assist staff in examining effects of changes in fleet replacement cycles. The tool also calculated estimated replacement cost, expected residual value from sale of used vehicles, and changes in maintenance expenses as vehicles age.

RECENT RAFTELIS SOLID WASTE EXPERIENCE

This matrix shows a sample of some of the solid waste clients throughout the U.S. that Raftelis staff has assisted and the services performed for these utilities.

State	Client	Project Team Client Experience	Acquisition Support Services	Assistance in Formulation of Interlocal Agreements	Collection System Study	Comprehensive Collection and Disposal System Rate Study	Debt Issuance Support	Detailed Institutional Review and Report Documenting All Contracts, Facilities and Operations	Development of Financial Models for Staff Use	Development of Formal Minimum Financial Reserve Policy	Landfill Air Space Utilization and Remaining Life Calculations	Landfill Closure and Post-Closure Care Cost Projections	Master Plan Financial Analysis Support	Regulatory Assistance Related to Franchise Collection Hauler Rate Filing	Sensitivity Analyses to Examine Financial Effects from Changes in Operations	Total & Marginal Cost Evaluations of Disposal Facilities	Financial Planning Study	Feasibility Analysis of Pay-As-You Throw Options
AL	City of Huntsville																	
AK	Municipality of Anchorage																	
AZ	City of Chandler																	
CA	Calaveras County																	
CA	City of Chino																	
CA	City of Lincoln																	
CA	City of Long Beach																	
CA	Madera County																	
CA	City of Monterey Park																	
CA	City of Ontario																	
CA	City of Oxnard																	
CA	City of Torrance																	
FL	City of Arcadia																	
FL	Babcock Ranch Community Independent Special District (BRCISD)																	
FL	City of Cape Coral																	
FL	City of Clermont																	
FL	Collier County																	
FL	Charlotte County																	
FL	City of Edgewater																	
FL	Hernando County																	
FL	Hillsborough County																	
FL	Lee County																	
FL	Martin County																	
FL	Manatee County																	
FL	North Sumeter County Utility Dependent District																	
FL	Miami Shores Village																	
FL	City of Plant City																	
FL	City of Panama City																	
FL	Pinellas County																	
FL	Sarasota County																	

State	Client	Project Team Client Experience	Acquisition Support Services	Assistance in Formulation of Interlocal Agreements	Collection System Study	Comprehensive Collection and Disposal System Rate Study	Debt Issuance Support	Detailed Institutional Review and Report Documenting All Contracts, Facilities and Operations	Development of Financial Models for Staff Use	Development of Formal Minimum Financial Reserve Policy	Landfill Air Space Utilization and Remaining Life Calculations	Landfill Closure and Post-Closure Care Cost Projections	Master Plan Financial Analysis Support	Regulatory Assistance Related to Franchise Collection Hauler Rate Filing	Sensitivity Analyses to Examine Financial Effects from Changes in Operations	Total & Marginal Cost Evaluations of Disposal Facilities	Financial Planning Study	Feasibility Analysis of Pay-As-You Throw Options
FL	City of Stuart				•													
FL	City of Tampa					•												
KS	City of Wichita	•							•		•	•						
OH	Montgomery County Environmental Services					•												
OK	City of Norman	•				•												
OK	City of Oklahoma City	•			•				•									
OK	City of Tulsa	•				•												
OR	City of Portland/Metro	•														•		
NC	Currituck County	•				•												
NC	Dare County	•				•			•									
NC	City of Greenville	•				•												
NC	City of Raleigh	•																•
NC	City of Rocky Mount	•																
NC	City of Wilmington	•				•			•		•	•						
NM	Village of Ruidoso	•				•							•					
SC	City of Georgetown	•				•										•		
TN	City of Memphis					•												•
TN	City of Nashville/Metro	•				•												
TX	City of DeSoto	•			•													
TX	City of Galveston	•			•													
UT	City of Canyonlands	•				•	•											
WA	City of Bainbridge Island	•			•													
WA	City of Tacoma					•			•	•								

KCI REFERENCES

City of Statesville NC

Reference: Mark Taylor, Director of Public Works and Engineering

P: 704.878.3552 / E: mtaylor@statesvillenc.net

Sanitation Operations Analysis

KCI was hired to perform an operational analysis of the city's sanitation department function. This analysis reviewed the collection operations of the city and its current means and methods for processing and disposal. This project included an on-site assessment of operational procedures, a financial analysis of the rates and cost of service, and a route and time on service review. The City implemented on-route GPS positioning systems to assist in determining number of stops per route, and efficiency of routing. KCI analyzed the system against a straw-man model, as well as analyzed the impacts of the discontinuation of curbside recycling, as well as various personnel, equipment and routing changes to positively impact the City's program.

City of Dover NH

Reference: John Storer, Director of Community Services

P: 603.516.6462 / E: j.storer@doover.nh.gov

Evaluation of Collection Service Alternatives

KCI was contracted by the City of Dover to assist with an assessment of the city's bag-based pay-as-you-throw (PAYT) collection operations to determine 1) whether to continue contracted service versus switching to city-provided services at the end of the current contract, 2) whether to convert to toters for solid waste and/or recycling service, and 3) whether to continue utilizing PAYT bags if toters are utilized. The project informed the city's decision-making process by providing information regarding a) financial impacts (capital and operational), b) infrastructure needs, c) equipment and human resource requirements, d) administrative and management needs, and e) options for processing, transfer & disposal services. The City of Dover is currently evaluating options recommended by KCI and will decide which options to implement in the spring of 2024.

City of Coral Gables FL

Reference: Peter Iglesias, City Manager

P: 305.460.5202 / E: piglesias@coralgables.com

Collection Assessment and Strategic Plan

Based on the result of KCI's prior work, the city engaged KCI to conduct an operational assessment of the existing residential collection services and identify opportunities to improve and modernize. The city provides its residents a high level of collection services including twice weekly backyard refuse collection, weekly backyard recycling collection, and weekly unlimited bulk yard and trash collection. KCI's work activities included onsite observation of collection operations, time and motion analysis, and computer modeling of collection operations. The modeling work projected the operational and financial impacts of various collection alternatives, specifically the changes in collection vehicles, collection crew size, number of crews needed, and impacts on capital and operating costs. In addition, KCI developed an online survey of residential customers that was deployed by the city to gather information regarding customer practices, attitudes, and preferences regarding collection services. KCI also participated in a community workshop where citizens were invited to provide input. The city is currently using the results of the assessment to implement an initial phase of collection improvements. Ongoing work with KCI is

focused on developing a strategic plan for modernizing and improving residential collection during the next several years.

City of Naples FL

References: Bob Middleton, Utilities Director
P: 239.213.4745 / E: bmiddleton@naplesgov.com

Ben Copeland, Utilities Budget and Finance Manager
P: 239.213.4714 / E: bcopeland@naplesgov.com

Solid Waste Operations Assessment

KCI is conducting an assessment of the city's solid waste operations. The scope of work includes a current state assessment of the city's existing services and opportunities to improve and modernize them with the overarching goal of continuing to provide a high-level of service and increase recycling and recovery. The assessment will evaluate existing operations, consider a range of service improvements and modifications, and develop a series of recommendations. The evaluation will review routing numbers and levels of various collection activities, evaluate the process for ancillary materials collection and an analysis of rates and financial information based upon the local market.

RFP 24-08, RTC Rate Study
Appendix B
Raftelis Proposal

PROJECT PERSONNEL

Project Personnel Assignments and Qualifications

WE HAVE DEVELOPED A TEAM OF CONSULTANTS WHO SPECIALIZE IN THE SPECIFIC ELEMENTS THAT WILL BE CRITICAL TO THE SUCCESS OF THE CITY'S PROJECT.

Our team includes senior-level professionals to provide experienced project leadership with support from talented consultant staff. This close-knit group has frequently collaborated on similar successful projects, providing the City with confidence in our capabilities.

Here, we have included an organizational chart showing the structure of our project team. On the following pages, we have included resumes for each of our team members as well as a description of their role on the project.

City of Fayetteville



Thierry Boveri CGFM

PROJECT DIRECTOR AND FINANCE LEAD | Vice President (Raftelis)



ROLE

Thierry will manage the day-to-day aspects of the project ensuring it is within budget, on schedule, and effectively meets the City's objectives. He will also lead the consulting staff in conducting analyses and preparing deliverables for the project. Thierry will serve as the City's main point of contact for the project. He will also lead the financial components of the project.

PROFILE

Thierry brings a client-focused approach with a strong desire to provide value and client satisfaction. He has performed numerous utility revenue sufficiency and cost-of-service studies for more than 65 local governments throughout the United States, prepared financial feasibility and disclosure reports totaling over \$1.75 billion in debt proceeds issued through the traditional bond market, state revolving loans, and rural development loans; and assisted in a variety of economic and miscellaneous fee studies. He has also been involved in the formulation of financial policies regarding liquidity and financial position related to industry best management practices. He has supported contract negotiations and provided other related utility and management advisory services. He specializes in the performance of solid waste cost of service and financial planning evaluations with the following areas of concentrations:

- Solid waste collection cost of service and rate studies
- Disposal cost of service and rate studies
- Assistance in formation of Solid Waste Enterprise Fund and development of residential assessments
- Long-Range Financial Modeling / Master Plans planning support
- Financial/economic evaluations of solid waste system operations
- Landfill capacity utilization and valuations
- Review of contractual arrangements (e.g., evaluation of collection hauler bids/contracts)
- Assistance in development of municipal interlocal agreements
- Assistance in feasibility studies in the issuance of debt (i.e., Bond Feasibility studies) and assistance in development of Bond Resolution / Trust Indenture agreements

Thierry is an active member of AWWA, WEF, GFOA and SWANA through his participation on several committees, periodic conference presentations on subject matters ranging from effective utility management (EUM) to the Circular Economy and as a principal author to WEF's *Manual of Practice No. 27, Financing and Charges for Wastewater Systems* and the WEF Water Reuse Road Map. Most recently, he presented on the "Top 5 Keys to Successful Financial Planning for Solid Waste Managers" at the 2021 SWANA Wastecon held in Orlando.

Specialties

- Solid waste fees, Water & sewer rate fees
- Parks & recreation fees, Wholesale fees, Impact fees
- Feasibility study
- Utility acquisition/valuations
- Capital planning tools
- Business/strategic plans/negotiations
- Desktop financial asset evaluation/reinvestment
- Cost/benefit analysis/life cycle NPV analysis
- Financial policies/best management practices

Professional History

- Raftelis: Vice President (2022-present); Senior Manager (2019-2021); Associate, PRMG (2005-2019)

Education

- Bachelor of Arts in Economics and International Business - Rollins College (2005)

Certifications

- Certified Government Financial Manager, No. 15483

Professional Memberships

- Solid Waste Association of North America: Florida – Board of Directors; Finance & Planning Committee
- AWWA: Florida Section - Finance & Rates Committee
- WEF: Utility Management Committee
- Government Finance Officers Association

ADDITIONAL RECENT SOLID WASTE PROJECT LIST

- Anchorage, AK – *Collection and Disposal COS Study 2020*
- Bainbridge Island, WA – *Collection System & Solid Waste Management Assessment 2022*
- Calaveras County, (CA) - *Solid Waste COS Study 2023*
- Chandler, AZ – *Comprehensive Solid Waste Collection and Transfer Station COS & Benchmarking Evaluation 2021*
- Chino, California – *Solid Waste Rate Study*
- Currituck County, NC – *2021 Solid Waste Rate Study*
- Dare County, NC – *2021 Solid Waste Rate Study*
- Georgetown, SC – *Solid Waste COS Study 2022*
- Hillsborough County, FL – *Comprehensive Solid Waste Collection and Disposal COS Study 2022*
- Lee County, FL – *Comprehensive Solid Waste Collection and Disposal COS Study 2022*
- Lincoln, CA - *2022 Solid Waste Rate Study*
- Long Beach, CA – *Waste-to-Energy and SB 1383 Procurement Support Services 2022*
- Madera County, CA – *Solid Waste COS Study 2021; 2023 Cost of Service and SWMS Evaluation*
- Martin County, FL – *2022 Solid Waste Rate Study*
- Manatee County, FL – *2022 Solid Waste Rate and Bond Feasibility Study*
- Nashville/Metro, TN – *Solid Waste Collection COS Study 2022*
- Oklahoma City, OK – *Collection COS Study 2021; Collection In-housing Study & Contract Negotiations Support 2022*
- Oxnard, CA – *Solid Waste Impact Fee Study 2021; Solid Waste COS Study 2022*
- Pinellas County, FL – *2022 Solid Waste Rate Study*
- Portland/Metro, OR – *Bulky Waste Assessment 2022*
- Tulsa, OK – *2021 Solid Waste Financial Plan & Procurement Support*
- Torrance, CA – *Solid Waste COS Study*
- Wichita, KS – *Solid Waste COS Study 2020*

Sarah Neely

FINANCE ANALYST | Consultant (Raftelis)

ROLE

Sarah will serve as the Lead Analyst and will work at the direction of Thierry in conducting analyses and preparing deliverables for the project.

PROFILE

Sarah brings a client-centric approach with a desire to provide value in all her engagements. She has contributed to projects involving water, wastewater, solid waste, and stormwater enterprise systems. She specializes in the performance of solid waste cost of service and financial planning evaluations with the following areas of concentrations:

- Solid waste collection cost of service and rate studies
- Disposal cost of service and rate studies
- Long-Range Financial Modeling / Master Plans planning support
- Financial/economic evaluations of solid waste system operations
- Review of contractual arrangements (e.g., evaluation of collection hauler bids/contracts)
- Assistance in feasibility studies in the issuance of debt (i.e., Bond Feasibility studies) and assistance in development of Bond Resolution / Trust Indenture agreements

KEY PROJECT EXPERIENCE

City of Oklahoma City (OK): Solid Waste Cost-of-service Rate Study

Sarah assisted the City in a formal cost of service rate study and financial forecast model, including a life cycle analysis of vehicle and cart costs. Key elements of the engagement included: i) providing recommendations concerning rate revenue adjustments over a 10-year period; ii) providing recommendations concerning the establishment of cash reserves for operating, capital, storm, cart, and other reserves; iii) identification of the cost of service for several of the City's key services including, bulky waste collection, recycling, illegal dumping and litter collection, and flow fee design. Sarah also assisted in the development of a management dashboard that City staff could use to test the sensitivity of rate requirements based on various capital financing scenarios and financial objectives.

City of Oxnard (CA): Solid Waste Impact Fee and Cost-of-service Study

Sarah assisted in the analysis and development of solid waste impact fees for the City of Oxnard (City). The fees developed included solid waste container, truck, and facility fees. Sarah supported the development of an impact fee model assessing the City's solid waste costs in terms of the appropriate units of service capacity per the fee type and the application of the cost per unit of service capacity to the customer's level of service requirements for fee design. The evaluation required review of the City's solid waste related fixed asset records and functional allocation of the assets (e.g., MRF and transfer station equipment, etc.).

Hillsborough County (FL): Solid Waste Rate Study and Bond Feasibility

Sarah assisted in preparing the annual financial forecast and revenue sufficiency analyses of the County's Solid Waste Division. The financial forecast and model was prepared to evaluate the current and projected fiscal position, support the development of collection and disposal fee rates for service, and develop a funding plan for ongoing



Specialties

- Solid waste fees
- Water & sewer fees
- Utility impact fee analysis
- Financial modeling/forecasting
- Revenue sufficiency studies
- Customer billing analysis

Professional History

- Raftelis: Consultant (2023-present); Associate Consultant (2021-2022)

Education

- Master of Business Administration, Finance - Rollins College (2021)
- Bachelor of Arts, International Business – Rollins College (2020)

Professional Memberships

- Solid Waste Association of North America (SWANA)
- Water Environment Federation (WEF)

capital re-investment. Sarah is also assisting the County in the issuance of solid waste bonds – the evaluation is currently on-going.

Lee County (FL): Solid Waste Rate Study

Sarah has assisted with the annual financial forecasts for the solid waste system. This project required performing comprehensive revenue sufficiency and cost of service evaluations for the solid waste system resulting in the adoption of the current solid waste assessment and tip fees currently charged by the County. Sarah has also assisted the County in ongoing updates to a capital planning tool for water and wastewater utility designed for County staff to determine effects on financial position and rates over various capital financing scenarios.

Madera County (CA): Solid Waste Cost-of-service Rate Study

Sarah assisted in the County in an expedited evaluation of the landfill cost of service. The primary purpose of the engagement was to: i) assess the cost of landfill disposal for the County's unincorporated residents; and ii) assess any effects to the unit cost of landfill disposal and the corresponding tip fee charged to the County's unincorporated residents from accepting contracted waste. The key study objectives and milestones achieved for the engagement included i) development of multi-year financial forecast (5 years) of the County's solid waste enterprise business operations; ii) allocations of cost for determination of the cost of disposal services to the unincorporated Residents of the County; and iii) assessed the effects to the unit cost of disposal from the County's current policy of accepting contracted waste at the landfill.

PROJECT LIST

- City of Bainbridge Island (WA) – Solid waste collection system and waste management assessment
- City of Cape Coral (FL) – Solid waste cost-of-service rate study
- City of Chandler (AZ) – Solid waste cost-of-service rate study
- City of Huntsville (AL) – Solid waste cost-of-service rate study
- City of Lincoln (CA) - Solid waste cost-of-service rate study
- City of Long Beach, (CA) - Solid waste waste-to-energy and SB1383 procurement support services
- City of Oklahoma City (OK) – Solid waste cost-of-service rate study
- City of Oxnard (CA) – Solid waste impact fee study, and solid waste cost-of-service rate study
- City of Tulsa (OK) – Solid waste cost-of-service rate study and waste-to-energy evaluation
- Calaveras County (CA) – Solid waste cost-of-service rate study
- Charlotte County (FL) – Solid waste rate study
- Hillsborough County (FL) - Solid waste cost-of-service rate study and bond feasibility
- Lee County (FL) - Solid waste cost-of-service rate study
- Manatee County (FL) –Water, wastewater, and solid waste bond feasibility study
- Martin County (FL) - Solid waste cost-of-service rate study
- Madera County (CA) – Solid waste cost-of-service rate study
- Village of Ruidoso (NM) – Solid waste cost-of-service rate study

PRESENTATIONS

- “Rates Across the State,” SWANA-Florida Winter Conference 2023
- “Solid Waste Impact Fees,” SWANA-Florida Winter Conference, 2022

Mitch Kessler

OPERATIONS LEAD | Principal (KCI)

ROLE

Mitch will be the operations lead ultimately responsible for the KCI team operational assessment work efforts.

PROFILE

Mitch has 39 years of solid waste experience and has managed or directed more than 1000 projects for over 350 KCI clients. His legal training is especially useful in understanding and interpreting local, state, and federal laws and regulations. His broad background in solid waste management and business makes him a Principal who is an industry leader with the history and experience to deliver results for our clients. Mitch is a nationally recognized expert in the procurement and operations of solid waste collection systems and materials recovery programs and facilities. He is especially knowledgeable in collection and market development issues as they relate to the economic viability of solid waste and recycling programs. Mitch is Past President of the Florida Sunshine Chapter of SWANA and current SWANA International Board member. He serves as an instructor for the Recycling, Collection, and Composting Certification Courses sponsored by SWANA National, and is a member of the SWANA committee that developed the Manager of Composting Operations Certification Course.

KEY PROJECT EXPERIENCE

City of Fayetteville (AR): Waste Reduction, Diversion, and Recycling Master Plan

Mitch directed the development of the Waste Reduction, Diversion, and Recycling Master Plan for Fayetteville. Based on the initial recommendations of the Master Plan, the City launched two separate pilot programs under KCI's direction: a residential single stream recyclables project and a commercial food waste composting pilot. Initial results of the pilots were overwhelmingly positive and led to ongoing operation of the food waste composting program. The project involved significant stakeholder engagement, which Mitch led through meetings with the public, elected officials, multi-family property managers, local Chamber of Commerce, private sector vendors, and two regional solid waste planning groups and by conducting surveys of residents and businesses.

Town of Carrboro (NC): Residential Solid Waste Study

Mitch was project director for this evaluation of waste disposal options and collection methods and schedules to reduce the town's carbon footprint and reduce costs. Recommendations were presented in a 3-phase approach to holistically address programs, diversion, and cost reduction. The Board of Aldermen voted unanimously to accept the Solid Waste Study and directed staff to pursue next steps for Phase 1 recommendations.



Professional History

- KCI: Principal

Education

- J.D. Environmental Law - University of New Hampshire Franklin Pierce School of Law (1985)
- M.A. American Studies - Purdue University (1981)
- B.S. Management - Purdue University (1979)
- A.A.S Horticulture - State University of New York (1976)

Certifications

- SWANA Recycling Systems
- SWANA Composting Programs
- SWANA Zero Waste Principles & Practices
- SWANA Collections Systems

Professional Memberships

- Solid Waste Association of North America (SWANA)
- Recycle Florida Today (RFT)
- Florida Organics Recyclers Assoc.
- National Recycling Coalition
- United States Composting Council

Nassau County (FL): Solid Waste Fund Analysis,

Mitch provided direction and oversight to KCI staff in evaluating the county's existing solid waste management system as part of a Solid Waste Management Plan. KCI staff assisted with benchmarking existing collection and recycling operations and finances, identifying and evaluating potential improvements to these operations, identifying options for funding solid waste operations, and researching potential impacts of existing and proposed state solid waste legislation.

Manatee County (FL): Solid Waste Master Plan

Mitch directed the development of this comprehensive master plan covering a 30-year planning period. In addition to identifying opportunities to increase waste diversion, KCI evaluated potential disposal options when the landfill reaches capacity and developed planning-level cost estimates for future development of a county-owned landfill. KCI also conducted a preliminary cost comparison of developing a transfer station versus direct hauling waste to a more remote landfill location. The result was an action-oriented, dynamic Master Plan.

City of Denver (CO): Master Solid Waste Plan & Update

Mitch was Project Director assisting with development of a Solid Waste Master Plan for the City of Denver which included evaluating current collection and drop off operations and develop short and long-term recommendations for efficient and high service levels, while meeting the city's desire to further expand recycling efforts through organics and construction and demolition (C&D) recovery. Given the extent of the KCI/LBA Team's prior Denver experience and knowledge, the city once again sought the Team's assistance in updating its Solid Waste Master Plan. The update focused on charting the course for expanding waste diversion and overall system improvements for 2020-2030 with specific focus on multi-family residential, commercial, and construction and demolition waste.

Charleston County (SC): Solid Waste Management Alternatives, Phase I, Green for Green Plan, Phase II

Mitch designed and managed an independent audit of the county's waste stream and solid waste management operations. The audit included an in-depth analysis of program costs and systems including collection, waste-to-energy and landfill disposal, compost, and MRF operations. Mitch directed research into emerging alternative technologies. Based on audit results, a Nine Point Green Strategy was developed for an efficient and cost-effective integrated solid waste management program. Mitch directed the implementation of the Nine Point Green Strategy. The plan includes implementing transfer and disposal changes, improving the capacity and efficiency of existing operations (compost, landfill, MRF), building alliances with local municipalities, and continuing the county's conversion to an automated single stream recycling program.

Peter Engel

OPERATIONS ANALYST | Director (KCI)

ROLE

Peter will play a key role in the operational assessment and evaluation for KCI and supporting Mitch with the day-to-day project direction and management activities for the operational assessment.

PROFILE

Peter has worked since 1987 with public and private sector clients in recycling, composting, and integrated solid materials management (ISMM). He offers keen insight and perspectives on how to integrate the policy, programs, infrastructure, and finances needed to achieve high diversion rates. From strategic planning to implementation and program optimization, Peter blends system-thinking and strong technical knowledge to help clients develop and implement practical solutions to achieve their materials management goals.

His core work experience includes:

- Collection system planning and analysis
- Operational performance improvement
- Materials management plans
- Financial analysis and rate studies
- Composting facility development and operations
- Recycling facility development and operations
- Public-private partnerships and procurement
- Regulatory analysis and development

Peter has played an integral role in implementing innovative solutions and best practices in recycling, composting, and integrated materials management for a wide range of local and regional governments and industries. He is also an experienced trainer having worked with both management and operational personnel in domestic and international contexts.

KEY PROJECT EXPERIENCE

City of Fayetteville (AR): Recycling and Transfer Facility Evaluation

Peter worked with the City's engineering consultant to develop and evaluate options to expand or replace the City's recycling facility which needs to be expanded and improved to handle increase volumes of recyclables and solid waste as well as to address aging infrastructure. Peter conducted an on-site assessment of the facility and developed future tonnage projections and operational needs. With this basis and through collaborative discussions with the City and its engineer, Peter identified design and programming needs and prepared a series of conceptual facility designs and process flow models. He worked jointly with the engineer to develop construction cost estimates. He also developed annual cost estimates for the facility options including revenue from commodity sales. Project results were presented to the City, which decided to pursue phased expansion and to seek federal grant support.



Professional History

- KCI: Project Director

Education

- M.S. Resource Management and Administration - Antioch University (1988)
- Bachelor of Arts - Connecticut College (1981)

Professional Memberships

- Solid Waste Association of North America (SWANA)
- U.S. Composting Council
- Antioch University New England
- Northeast Resource Recovery Association
- Maine Resource Recovery Association

Boston Mountain and Benton County Solid Waste Districts (AR): Waste Reduction and Recycling Master Plan

Peter served on the project team that developed a Waste Reduction and Recycling Master Plan for the Northwest Arkansas region, including the Boston Mountain and Benton County Solid Waste Management Districts. Peter's focus was on developing alternatives and options for the region to consider in diverting further organic material, such as food and yard waste, from the primary solid waste management stream. This evaluation looked into processing options for the region to invest in, as well as collection options for the various districts and governments to consider for future planning.

Durango (CO): Privatization Assessment

Based on prior work evaluating the city's publicly operated collection, recycling and transfer system, Peter completed a brief assessment of privatization options to improve cost-effectiveness while maintaining the city's comprehensive services and diversion performance. The assessment considered the local marketplace's unique structure, Colorado statutes, operational impacts, customer impacts, and other factors to provide the city council with a basis for informed decision making.

City of Coral Gables (FL): Evaluation of Collection Service Improvement Alternatives

Peter led the review of existing collection operations and evaluation of options to improve and modify services. Coral Gables provides a unique blend of backyard garbage and recycling collection services and curbside bulk trash collection to its residents. The scope of this project entailed field-level observations to identify immediate improvement opportunities to improve safety and service quality and define potential options to improve service efficiency. Improvement options were evaluated using a proprietary spreadsheet model to determine operational resource requirements and project costs. The results were used by the city as the basis for improving operational efficiency and controlling the cost of services.

City of Sarasota (FL): Collection Services Analysis

Peter managed a detailed analysis of the collection services residential and commercial garbage collection services currently provided by city crews. Historically the city contracted residential recycling and yard waste collection service with the private sector. However, during the last bidding process, the costs for these contracted services were not acceptable to the city. Using the information obtained from the analysis of existing city and private services along with general industry knowledge, Peter projected the operational requirements and costs for the city to provide the previously contracted services.

City of Portland (ME): Evaluation of Collection Service Improvement Alternatives

Peter was responsible for this operational and financial evaluation of Portland's existing collection service. His work included developing a spreadsheet-based model to evaluate the potential operational and financial impacts of improving current operations; converting from bin to cart-based recycling; and implementing residential source-separated organics collection. KCI presented a series of recommended program improvements and strategies designed to increase operational efficiency, cost effectiveness, and waste diversion.

Randy Rudd

OPERATIONS ANALYST | Senior Consultant (KCI)

ROLE

Collection operational assessment subject matter expert supporting Mitch and Peter.

PROFILE

Randy joined KCI after 30 years as a Department Director for multiple local government solid waste operations in Florida and South Carolina. He is a manager with technical skills and experience in project work, including solid waste collection operations, waste management strategic plans, recycling collection operations and materials recovery facility construction and operations, disposal operations, planning and implementation, grant preparation and implementation, data analysis, and studies, processing contract management, educational material development, training, rate/fee reviews and analysis, and more.

Randy has a strong background in local government management from a 30-year career in the public sector. He managed multiple transitions from manual to fully automated collection programs, constructed and operated one publicly owned material recovery facility, and operated a second. Randy has also implemented and operated award-winning compost and educational programs. His previous experience with multiple communities in Florida and South Carolina has given him a unique perspective and understanding of both municipal and county agencies and how they should be operated.

KEY PROJECT EXPERIENCE

City of Dover (NH): Evaluation of Collection Service Alternatives

Randy is assisting the City of Dover with an assessment of the city's bag-based pay-as-you-throw (PAYT) collection operations to determine 1) whether to continue contracted service versus switching to city-provided services at the end of the current contract, 2) whether to convert to totes for solid waste and/or recycling service, and 3) whether to continue utilizing PAYT bags if totes are utilized. The project will inform the city's decision-making process by providing information regarding a) financial impacts (capital and operational), b) infrastructure needs, c) equipment and human resource requirements, d) administrative and management needs, and e) options for processing, transfer & disposal services.

City of Naples (FL): Operations Assessment

KCI is currently conducting an assessment of the city's solid waste operations. Randy will serve as a senior consultant on this project and will assist with an assessment to evaluate existing operations, consider a range of service improvements and modifications, and develop a series of recommendations. The scope of work will include a current state assessment of the city's existing services and opportunities to improve and modernize them with the overarching goal of continuing to provide a high-level of service and increase recycling and recovery. The evaluation will review routing numbers and levels of various collection activities, evaluate the process for ancillary materials collection and an analysis of rates and financial information based upon the local market.



Professional History

- KCI: Senior Consultant

Education

- B.S. Political Science / Public Administration - University of South Florida (1990)

Certifications

- Formerly certified by Solid Waste Association of North America as:
- Integrated Solid Waste Manager
- Recycling Manager
- Transfer Station Manager
- Landfill Manager

Professional Memberships

- Carolina Recycling Association
- SWANA FL Chapter
- Recycle Florida Today
- Pinellas Partners in Recycling

Sarasota County (FL): County Facilities Recycling Collection Analysis, In-House Collection Analysis

Historically, the county has relied on a private contractor to collect recyclables from county buildings and facilities. However, with significant fee increases in recent years, the county has directed KCI to analyze the operational and financial impacts of the county assuming responsibility for collecting recyclables. Randy will serve as a senior consultant on this project and assist with work activities include compiling an inventory of service locations and the method and frequency of collection, based on which KCI is utilizing a spreadsheet-based collection model to determine the number of collection crews and operational requirements. Capital and operating costs estimates will be developed and compared to the costs of contracted service. In addition, the county would need to assume responsibility for vehicle and container maintenance and repair, so an assessment of the county Fleet Department's capabilities is being conducted as well.

Randy serves as the senior consultant for this analysis of the cost, staffing, and operational implications of potentially performing solid waste collection services as an in-house service rather than through a franchised vendor. This project will review the operational needs in terms of staffing, equipment, facilities, and other factors and develop a cost model for use in considering this as an option for continued solid waste collections management.

City of Fort Pierce (FL) Rate Study

Randy is serving as a consultant on this cost of service & rate study and providing technical support on collection activities. The city identified several specific aspects to be taken into consideration including lack of rate increases since 2016, significant projected residential and commercial growth, private sector competition for drivers, desire to consider service delivery options for yard waste and bulk waste, and desire to move forward with ordinance revisions. The primary focus will be on a cost of service and rate study for the city's current services in order to address the critical issue of defining the requirements and funding options for financial sustainability and managing major growth during the 5-year planning period. The study will be based on current services as well as looking at the option to modify residential yard waste and bulk waste service and will include a comparison with other similar local communities services, fees, and costs.

Boston Mountain Solid Waste District (AR): Operations Analysis and Waste Characterization Study

KCI is currently conducting a two-phase project for the Boston Mountain Solid Waste District. Phase one will include an operational assessment of the District's solid waste operations. Randy will serve as a senior consultant on this project and will conduct an assessment to evaluate existing operations, structure, rules, regulations, and contracts, and develop recommendations to improve operational efficiency and efficacy. Phase two will include a two-week waste characterization study to include both MSW and recyclables. The characterization study will include waste and recyclables samples from the BMSWD, and the Cities of Fayetteville and Johnson, AR. KCI will provide the BMSWD and the Cities with a final report with the results of the characterization study.

TIMELINE

Timeline

Raftelis and KCI will complete the scope of services within the timeframe shown in the schedule below. The proposed schedule assumes a notice-to-proceed by May 2024 subject to project award and contract negotiation and that the project team will receive the needed data in a timely manner and be able to schedule meetings as necessary. Project completion is estimated within a 6-9 month period contingent upon scheduling for presentation to the Mayor and City Council.

	2024						
TASKS	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7 - 9
Task 1. Project Initiation and Operational Assessment	●	●	●	●			
Task 2. Financial Model Revenue Requirements Forecast Development			●	●	●		
Task 3. Cost of Service and Rate Design					●	●	●
Task 4. Reporting and Presentation						●	●

- In-person Meetings
- Web Meetings
- Deliverables
- Draft Report
- Final Report

COST PROPOSAL

Cost Proposal

The following table provides a breakdown of our proposed fee for this project. This table includes the estimated level of effort required for completing each task and the hourly billing rates for our project team members. Expenses include costs associated with travel.

The Raftelis/KCI Team is focused on meeting the City's needs – both the scope of services and the cost. In light of that, we welcome the opportunity to discuss and refine our methodology to ensure that we meet the City's expectations.

Tasks	Web Meetings	In-person Meetings	Hourly Cost Estimate							Labor Expense	Travel Expense Allowance	Total Fees & Expenses	
			Raftelis			KCI							
			TB	SN	AC	MK	PE	RR	Total				
Task 1: Project Initiation and Operational Assessment	2	1	9	4	4	32	40	68	157	\$31,600	\$5,000	\$36,600	
2. Financial Model Revenue Requirements Forecast Development	3	0	12	37	37	8	28	20	142	\$29,005	\$0	\$29,005	
3. Cost of Service and Rate Design	3	0	16	24	18	2	4	0	64	\$14,880	\$0	\$14,880	
4. Reporting and Presentation	1	1	24	28	16	20	28	12	128	\$29,100	\$2,000	\$31,100	
Total Meetings / Hours	9	2	61	93	75	62	100	100	491				
Hourly Billing Rate			\$340	\$210	\$175	\$245	\$190	\$170					
Total Professional Fees			\$20,740	\$19,530	\$13,125	\$15,190	\$19,000	\$17,000	\$104,585				
TB = Thierry Boveri, Raftelis Vice President, Rate Study PM; SN = Sarah Neely, Raftelis Consultant, Financial Analyst; AC = Raftelis Associate Consultant (td); MK = Mitch Kessler, KCI Principal, Operations Lead; PE = Peter Engel, KCI Director, Operations Analyst; RR = Randy Rudd, KCI Senior Consultant, Operations Analyst.										Total Fees & Expenses	\$104,585	\$7,000	\$111,585

Hourly Billing Rates

Project team hours and expenses will be billed on the same invoice. Expenses related to travel will be billed at cost. Additional services outside the agreed upon scope of work will be billed on a time and materials basis. Raftelis' billing rates can be found below. These rates will be in effect for calendar year 2024 and will then increase annually by 3% unless specified otherwise by contract.

RAFTELIS RATES

POSITION	HOURLY BILLING RATE*
Executive Vice President	\$375
Vice President	\$340
Senior Manager	\$305
Manager	\$270
Senior Consultant	\$240
Consultant	\$210
Associate	\$175
Technology Charge**	\$10

* These rates will be in effect for calendar year 2024 and will then increase annually by 3% unless specified otherwise by contract.

KCI RATES

POSITION	HOURLY BILLING RATE*
Principal	\$245
Director	\$190
Senior Consultant	\$170

EXCEPTIONS

Exceptions

We request that the City consider making the following modifications, shown in red below, to the Professional Services Agreement. Please contact us if you have any questions or concerns about these modifications.

15. CITY INDEMNIFICATION:

The successful Proposer(s) agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement, **by the Proposer**, or litigation based thereon, with respect to the services or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

Appendix B
RFP 24-08, RTC Rate Study
Raftelis Proposal

APPENDIX: REQUIRED FORMS

Appendix: Required Forms

Appendix B
RFP 24-08, RTC Rate Study
Raftelis Proposal



1. DISCLOSURE INFORMATION

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

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

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

- ☒ 1) NO KNOWN RELATIONSHIP EXISTS
- ☐ 2) RELATIONSHIP EXISTS (Please explain):
- _____
- _____
- _____

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

Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.

Pursuant Arkansas Code Annotated §25-1-1002, the Contractor agrees and certifies that they do not currently boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-1002. If at any time during the contract the contractor decides to boycott Energy, Fossil Fuel, Firearms, and/or Ammunition Industries, the contractor must notify the contracted public entity in writing.

2. PRIMARY CONTACT INFORMATION

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews. **NOTE: Each Proposer shall submit to the City a primary contact name, e-mail address, and phone number (preferably a cell phone number) where the City selection committee can call for clarification or interview via telephone.**

Corporate Name of Firm: Raftelis Financial Consultants, Inc.

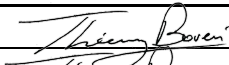
Primary Contact: Thierry Boveri Title of Primary Contact: Vice President

Phone#1 (cell preferred): 407.628.2600 Phone#2: 407.421.1400

E-Mail Address: tboveri@raftelis.com

3. ACKNOWLEDGEMENT OF ADDENDA

Acknowledge receipt of addenda for this invitation to bid, request for proposal, or request for qualification by signing and dating below. All addendums are hereby made a part of the bid or RFP documents to the same extent as though it were originally included therein. Proposers/Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject Contractor to disqualification.

ADDENDUM NO.	SIGNATURE AND PRINTED NAME	DATE ACKNOWLEDGED
1	 Thierry Boveri	4/4/24
2	 Thierry Boveri	4/9/24
3	 Thierry Boveri	4/15/24

4. DEBARMENT CERTIFICATION:

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

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

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

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

NAME OF COMPANY: Raftelis Financial Consultants, Inc.

PHYSICAL ADDRESS: 341 N. Maitland, Suite 300, Maitland, FL 32751

MAILING ADDRESS: 341 N. Maitland, Suite 300, Maitland, FL 32751

TAX ID #: 20-1054069 AR. SECRETARY OF STATE FILING #: 811118350

PHONE: 407.628.2600 FAX: 828.484.2442

E-MAIL: tboveri@raftelis.com

SIGNATURE: 

PRINTED NAME: Thierry Boveri

TITLE: Vice President DATE: 4/16/24

Appendix B
RFP 24-08, RTC Rate Study
Raftelis Proposal

END OF RFP DOCUMENT



CITY OF
FAYETTEVILLE
ARKANSAS

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8256

TDD (Telecommunication Device for the Deaf): 479.521.1316

RFP (REQUEST FOR PROPOSAL)

Request for Proposal: RFP 24-08, Recycling and Trash Collection Rate Study

DEADLINE: Thursday, April 11, 2024 before 2:00 PM, local time

SR. PURCHASING AGENT: Amanda Beilfuss, abeilfuss@fayetteville-ar.gov

DATE OF ISSUE AND ADVERTISEMENT: 03/17/2024

REQUEST FOR PROPOSAL

RFP 24-08, Recycling and Trash Collection Rate Study

No late proposals shall be accepted. RFP's shall be submitted through the City's third-party electronic bidding platform or by submitting a sealed physical proposal to the City of Fayetteville, Purchasing Division at the below location.

City of Fayetteville
Purchasing Division – Room 306
113 West Mountain Street
Fayetteville, AR 72701

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

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

City of Fayetteville, AR
Request for Proposal
RFP 24-08, Recycling and Trash Collection Rate Study

The City of Fayetteville, Arkansas, is now accepting proposals from qualified firms for services required to complete a comprehensive cost of service/rate study for the Recycling and Trash Collection Division of the City of Fayetteville. Any questions regarding this RFP shall be directed to Amanda Beilfuss, City of Fayetteville Sr. Purchasing Agent at abeilfuss@fayetteville-ar.gov or (479) 575-8220.

Solicitation documents and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids. All proposals shall be received by **Thursday, April 11, 2024 before 2:00 PM, Local Time** utilizing the electronic bidding software or by submitting a sealed physical proposal to the City of Fayetteville, Purchasing Division. All proposals are due before the time stated. No late proposals shall be accepted. Submitting electronically is strongly encouraged. The City of Fayetteville shall not be responsible for lost or misdirected proposals, or for failure of proposer's technical equipment.

All interested parties shall be qualified to do business and licensed in accordance with all applicable laws of the state and local governments where the project is located. Proposers shall have a current, valid registration with the Arkansas Secretary of State at time of proposal deadline.

The City of Fayetteville reserves the right to reject any or all Proposals and to waive irregularities therein, and all parties agree that such rejection shall be without liability on the part of the City of Fayetteville for any damage or claim brought by any interested party because of such rejections, nor shall any interested party seek any recourse of any kind against the City of Fayetteville because of such rejections. The filing of any Statement in response to this invitation shall constitute an agreement of the interested party to these conditions.

City of Fayetteville

By: Amanda Beilfuss, Sr. Purchasing Agent

P: 479.575.8220 abeilfuss@fayetteville-ar.gov

TDD (Telecommunications Device for the Deaf): (479) 521-1316

Date of advertisement: 03/17/2024

This publication was paid for by the Purchasing Division of the City of Fayetteville, Arkansas.

Amount paid: \$167.99

1. SUBMISSION OF A PROPOSAL SHALL INCLUDE:

Each proposal shall contain the following at a minimum. Proposer must also address detailed requirements as specified in the Scope of Work.

- a. A written narrative describing the method or manner in which the Proposer proposes to satisfy requirements of this RFP in the most cost-effective manner. The term Proposer shall be in reference to a firm or individual responding to this solicitation.
- b. A description of the Proposer's experience in providing the same or similar services as outlined in the RFP. This description should include the names of the person(s) who will provide the services, their qualifications, and the years of experience in performing this type of work. Also, include the reference information requested in this RFP.
- c. The complete fee and cost to the City for all services outlined in this RFP.
- d. Statement should be no more than twenty-five (25) pages; single sided, standard, readable, print on standard 8.5x11 documents. Proposers shall also submit a three (3) page (maximum) executive summary. The following items will not count toward the twenty-five page limitation: appendix, cover sheet, 3-page executive summary, resumes (resumes shall be no more than 1 page per person), and forms provided by the City for completion.
 - i. **Submitting and responding to this RFP:** Proposals shall be prepared simply and economically, providing a straightforward, concise description of its ability to meet the requirements for the project. Fancy bindings, colored displays, and promotional material are not required. Emphasis should be on completeness and clarity of content. All documents physically submitted should be typewritten on standard 8 1/2" x 11" white papers and bound in one volume. Exceptions would be schematics, exhibits, one-page resumes, and City required forms. Limit proposal to twenty-five (25) pages or less, excluding one-page team resumes, references, and forms required by the City for completion. All proposals shall be sealed upon delivery to the City of Fayetteville.
1. **Option 1 –Electronic Submittal (*strongly encouraged*):** Proposers can go to www.fayetteville-ar.gov/bids and follow the prompts to submit a proposal within the electronic bidding platform. If a proposal is submitted electronically, a physical submission is not necessary. All Proposers must register in order to be able to submit. There is no fee for registration.
2. **Option 2 – Physical Submittal:** All Proposers shall submit one (1) original copy of their proposal as well as one (1) electronic copy on a properly labeled USB or other electronic media device. The electronic copy submitted shall be contained into one single electronic file and shall be identical to the hard copies provided. The use of Adobe PDF documents is strongly recommended. Files contained on an USB or electronic media

shall not be restricted against saving or printing. Electronic copies shall not be submitted via e-mail to City employees by the Proposer and shall be provided to the City in a sealed manner. FedEx, UPS, USPS, or other packages should be clearly marked with the RFP number on the outside of the mailing package.

- e. Proposals will be reviewed following the stated deadline, as shown on the cover sheet of this document. Only the names of Proposer's will be available after the deadline until a contract has been awarded by the Fayetteville City Council. All interested parties understand proposal documents will not be available until after a valid contract has been executed.
- f. Proposers shall submit a proposal based on documentation published by the Fayetteville Purchasing Division.
- g. Proposals must follow the format of the RFP. Proposers should structure their responses to follow the sequence of the RFP.
- h. Proposers shall have experience in work of the same or similar nature and must provide references that will satisfy the City of Fayetteville. Proposer shall furnish a reference list of clients for whom they have performed similar services and must provide information as requested in this document.
- i. Proposer is advised that exceptions to any of the terms contained in this RFP or the attached service agreement must be identified in its response to the RFP. Failure to do so may lead the City to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.
- j. Local time shall be defined as the time in Fayetteville, Arkansas on the due date of the deadline. Documents shall be received before the deadline time as shown by the atomic clock located in the Purchasing Division Office or electronic clock located in the City's third-party bidding software.

2. WRITTEN REQUESTS FOR INTERPRETATIONS OR CLARIFICATION:

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this proposal must be sent in writing via e-mail to the Purchasing Department. Responses to questions may be handled as an addendum if the response would provide clarification to the requirements of the proposal. All such addenda shall become part of the contract documents. The City will not be responsible for any other explanation or interpretation of the proposed RFP made or given prior to the award of the contract.

3. DESCRIPTION OF SUPPLIES AND SERVICES:

Any manufacturer's names, trade name, brand name, catalog number, etc. used in specifications are for the purpose of describing and establishing general quality levels. Such references are NOT intended to be restrictive. Proposals shall be considered for all brands that meet the quality of the specifications listed for any items.

4. RIGHTS OF CITY OF FAYETTEVILLE IN REQUEST FOR PROPOSAL PROCESS:

In addition to all other rights of the City of Fayetteville, under state law, the City specifically reserves the right to the following:

- a. The City of Fayetteville reserves the right to rank firms and negotiate with the highest-ranking firm. Negotiation with an individual Proposer does not require negotiation with others.
- b. The City of Fayetteville reserves the right to select the proposal it believes will serve the best interest of the City.
- c. The City of Fayetteville reserves the right to accept or reject any or all proposals.
- d. The City of Fayetteville reserves the right to cancel the entire request for proposal.
- e. The City of Fayetteville reserves the right to remedy or waive technical or immaterial errors in the request for proposal or in proposals submitted.
- f. The City of Fayetteville reserves the right to request any necessary clarifications, additional information or proposal data without changing the terms of the proposal.
- g. The City of Fayetteville reserves the right to make selection of the Proposer to perform the services required on the basis of the original proposals without negotiation.
- h. The City reserves the right to ask for a best and final offer from one or more Proposers. The best and final offer process is not guaranteed; therefore, Proposers shall submit and respond to this RFP on the most favorable terms available.

5. EVALUATION CRITERIA:

The evaluation criterion defines the factors that will be used by the selection committee to evaluate and score responsive, responsible and qualified proposals. Proposers shall include sufficient information to allow the selection committee to thoroughly evaluate and score proposals. Each proposal submitted shall be evaluated and ranked by a selection committee. The contract will be awarded to the most qualified Proposer, per the evaluation criteria listed in this RFP. Proposers are not guaranteed to be ranked.

6. COSTS INCURRED BY PROPOSERS:

All expenses involved with the preparation and submission of proposals to the City, or any work performed in connection therewith, shall be borne solely by the Proposer(s). No payment will be made for any responses received, or for any other effort required of, or made by, the Proposer(s) prior to contract commencement.

7. ORAL PRESENTATION:

An oral presentation and/or interview may be requested of any firm, at the selection committee's discretion.

8. CONFLICT OF INTEREST:

- a. The Proposer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided in City of Fayetteville Code Section 34.26 titled "Limited Authority of City Employee to Provide Services to the City".
- b. The Proposer shall promptly notify Amanda Beilfuss, City Sr. Purchasing Agent, in writing, of all potential conflicts of interest for any prospective business association, interest, or other circumstance

which may influence or appear to influence the Proposer's judgment or quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of which the Proposer may undertake and request an opinion to the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Proposer. The City agrees to communicate with the Proposer its opinion via e-mail or first-class mail within thirty days of receipt of notification.

9. WITHDRAWAL OF PROPOSAL:

A proposal may be withdrawn prior to the time set for the proposal submittal based on a written request from an authorized representative of the firm; however, a proposal shall not be withdrawn after the time set for the proposal.

10. LATE PROPOSAL OR MODIFICATIONS:

- a. Proposal and modifications received after the time set for the proposal submittal shall not be considered. Modifications in writing received prior to the deadline will be accepted. The City will not be responsible for misdirected bids. Proposers refer to their submission status in the online bidding portal or call the Purchasing Division at (479) 575-8220 to ensure receipt of their submittal documents prior to opening time and date listed.
- b. The time set for the deadline shall be local time for Fayetteville, AR on the date listed. All proposals shall be received in the Purchasing Division BEFORE the deadline stated. The official clock to determine local time shall be the atomic clock located in the Purchasing Division, Room 306 of City Hall, 113 W. Mountain, Fayetteville, AR.

11. CONSTITUTIONAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:

The laws of the State of Arkansas apply to any purchase made under this request for proposal. Proposers shall comply with all constitutional, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), & OSHA as applicable to this contract.

12. PROVISION FOR OTHER AGENCIES:

Unless otherwise stipulated by the Proposer, the Proposer agrees to make available to all Government agencies, departments, municipalities, and counties, the proposal prices submitted in accordance with said proposal terms and conditions therein, should any said governmental entity desire to buy under this proposal. Eligible users shall mean all state of Arkansas agencies, the legislative and judicial branches, political subdivisions (counties, local district school boards, community colleges, municipalities, counties, or other public agencies or authorities), which may desire to purchase under the terms and conditions of the contract.

13. COLLUSION:

The Proposer, by affixing his or her signature to this proposal, agrees to the following: "Proposer certifies that their proposal is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item(s) and/or services and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

14. RIGHT TO AUDIT, FOIA, AND JURISDICTON:

- a. The City of Fayetteville reserves the privilege of auditing a Contractor's records as such records relate to purchases between the City and said Contractor.
- b. Freedom of Information Act: City contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.
- c. Legal jurisdiction to resolve any disputes shall be Arkansas with Arkansas law applying to the case.

15. CITY INDEMNIFICATION:

The successful Proposer(s) agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the services or any part thereof covered by this order, and such obligation shall survive acceptance of the services and payment thereof by the City.

16. VARIANCE FROM STANDARD TERMS & CONDITIONS:

All standard terms and conditions stated in this request for proposal apply to this contract except as specifically stated in the subsequent sections of this document, which take precedence, and should be fully understood by Proposers prior to submitting a proposal on this requirement.

17. ADA REQUIREMENT FOR PUBLIC NOTICES & TRANSLATION:

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 479.521.1316 (telecommunications device for the deaf), no later than seven days prior to the deadline. Persons needing translation of this document shall contact the City of Fayetteville, Purchasing Division, immediately.

18. CERTIFICATE OF INSURANCE:

The successful Proposer shall provide a Certificate of Insurance of professional liability insurance in the amount of \$1 million US dollars, at minimum. Such Certificate of Insurance shall list the City as an additional insured and not be required unless firm is selected.

19. PAYMENTS AND INVOICING:

The Proposer must specify in their proposal the exact company name and address which must be the same as invoices submitted for payment as a result of award of this RFP. Further, the successful Proposer is responsible for immediately notifying the Purchasing Division of any company name change, which would cause invoicing to change from the name used at the time of the original RFP. Payment will be made within thirty days of invoice received. The City of Fayetteville is very credit worthy and will not pay any interest or penalty for untimely payments. **Payments can be processed through Proposer's acceptance of Visa at no additional costs to the City for expedited payment processing.** The City will not agree to allow any increase in hourly rates by the contract without PRIOR Fayetteville City Council approval.

20. CANCELLATION:

- a. The City reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the Contractor in writing of the intention to cancel or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.
- b. Failure of the contractor to comply with any of the provisions of the contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.
- c. In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source, any items and/or services which have not been delivered within the period of time from the date of order as determined by the City of Fayetteville.
- d. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the Contractor of such occurrence and contract shall terminate of the last day of the current fiscal period without penalty or expense to the City.

21. ASSIGNMENT, SUBCONTRACTING, CORPORATE ACQUISITIONS AND/OR MERGERS:

- a. The Contractor shall perform this contract. No assignment of subcontracting shall be allowed without prior written consent of the City. If a Proposer intends to subcontract a portion of this work, the Proposer shall disclose such intent in the proposal submitted as a result of this RFP.
- b. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) calendar days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first.

22. NON-EXCLUSIVE CONTRACT:

Award of this RFP shall impose no obligation on the City to utilize the Contractor for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the City's best interest. In the case of multiple-phase contracts, this provision shall apply separately to each item.

23. LOBBYING:

Lobbying of selection committee members, City of Fayetteville employees, or elected officials regarding request for proposals, request for qualifications, bids or contracts, during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, and agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the request for proposal, request for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the City of Fayetteville and shall be prohibited until either an award is final or the protest is finally resolved by the City of Fayetteville; provided, however, nothing herein shall prohibit a prospective/bidder/proposer from contacting the Purchasing Division to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any request for proposal,

request for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any request for proposal, request for qualification, bid or contract to be rejected.

24. ADDITIONAL REQUIREMENTS:

The City reserves the right to request additional services relating to this RFP from the Proposer. When approved by the City as an amendment to the contract and authorized in writing prior to work, the Contractor shall provide such additional requirements as may become necessary.

25. SERVICES AGREEMENT:

A written agreement, in substantially the form attached, incorporating the RFP and the successful proposal will be prepared by the City, signed by the successful Proposer and presented to the City of Fayetteville for approval and signature of the Mayor.

26. INTEGRITY OF REQUEST FOR PROPOSAL (RFP) DOCUMENTS:

Proposers shall use the original RFP form(s) provided by the Purchasing Division and enter information only in the spaces where a response is requested. Proposers may use an attachment as an addendum to the RFP form(s) if sufficient space is not available on the original form for the Proposer to enter a complete response. **Any modifications or alterations to the original RFP documents by the Proposer, whether intentional or otherwise, will constitute grounds for rejection of such RFP response.** Any such modifications or alterations a Proposer wishes to propose shall be clearly stated in the Proposer's RFP response and presented in the form of an addendum to the original RFP documents.

27. OTHER GENERAL CONDITIONS:

- a. Proposers must provide the City with their proposals signed by an employee having legal authority to submit proposals on behalf of the Proposer. The entire cost of preparing and providing responses shall be borne by the Proposer.
- b. The City reserves the right to request any additional information it deems necessary from any or all Proposers after the submission deadline.
- c. This solicitation is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the City to pay for any costs incurred by Proposer in preparation. It shall be clearly understood that any costs incurred by the Proposer in responding to this request for proposal is at the Proposer's own risk and expense as a cost of doing business. The City of Fayetteville shall not be liable for reimbursement to the Proposer for any expense so incurred, regardless of whether or not the proposal is accepted.
- d. If products, components, or services other than those described in this bid document are proposed, the Proposer must include complete descriptive literature for each. All requests for additional information must be received within five working days following the request.
- e. **Any uncertainties shall be brought to the attention to Amanda Beilfuss immediately via telephone (479.575.8220) or e-mail (abeilfuss@fayetteville-ar.gov).** It is the intent and goal of the City of Fayetteville Purchasing Division to provide documents providing a clear and accurate understanding

of the scope of work to be completed and/or goods to be provided. We encourage all interested parties to ask questions to enable all Proposers to be on equal terms.

- f. Any inquiries or requests for explanation in regard to the City's requirements should be made promptly to Amanda Beilfuss, City of Fayetteville, Sr. Purchasing Agent via e-mail (abeilfuss@fayetteville-ar.gov) or telephone (479.575.8220). No oral interpretation or clarifications will be given as to the meaning of any part of this request for proposal. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms via written addendum. Names of firms submitting any questions, clarifications, or requests will not be disclosed until after a contract is in place.
- g. At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews.
- h. Any information provided herein is intended to assist the Proposer in the preparation of proposals necessary to properly respond to this RFP. The RFP is designed to provide qualified Proposers with sufficient basic information to submit proposals meeting minimum specifications and/or test requirements but is not intended to limit a RFP's content or to exclude any relevant or essential data.
- i. Proposers irrevocably consent that any legal action or proceeding against it under, arising out of or in any manner relating to this Contract shall be controlled by Arkansas law. Proposer hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.
- j. The successful Proposer shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of City of Fayetteville. In case the successful Proposer assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the successful Proposer shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this contract.
- k. The successful Proposer's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. The successful Proposer shall keep himself/herself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in these Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, s/he shall herewith report the same in writing to the City of Fayetteville.

1. INTRODUCTION:

- a. Fayetteville is a thriving community of 95,230 residents (2021 Census estimate). As the second largest city in Arkansas, Fayetteville provides all the resources and advantages of a large city while maintaining a quality of life that remains true to its unique heritage. Fayetteville is the county seat of Washington County, Arkansas.
- b. The Recycling and Trash Collection Division (RTC) operates as an Enterprise fund within the City of Fayetteville. By ordinance, the City collects all residential and commercial waste using carts and dumpster service. The Division competes with licensed franchise holders for open top and compactor services. The City provides recycling and yard waste collection services to all single-family residential units. The Division operates a Transfer Station, Recycling Center, and Composting operation. The City recently adopted a Climate Action Plan (available at: <https://www.fayetteville-ar.gov/4260/Climate-Action-Plan>) which directs the Division to put programs in place to divert 40% of the City's waste stream.

2. SCOPE OF WORK

The broad objective of the study is to adequately fund existing solid waste services, foreseeable capital costs, and debt service that is derived in an equitable and justifiable manner from new and existing customers.

The study shall include an assessment of our existing operations, to include at a minimum, an analysis of the City of Fayetteville's Recycling and Trash Collection user characteristics, a review of the City's current collection equipment, review of the City's current collection routes and timing, make recommendations for refinements and modifications to the collections system and provide feasibility level cost estimates for implementation of said recommendations.

The study, at a minimum, shall address the following objectives:

- a. Compare current recycling and trash collection service costs (operations, and capital improvements) against appropriate industry benchmarks
- b. Recommend baseline rate structures required to guarantee the sustainability of the City's recycling and trash services and provide for collection equipment upgrade and maintenance
- c. Evaluate Collection of:
 - i. Material by Program;
 1. Curbside recyclables
 2. Apartment recyclables
 3. Commercial recyclables
 4. Residential solid waste
 5. Commercial solid waste
 6. Industrial solid waste
 7. Yard waste

- ii. Bulk item pick up program
 - iii. Transfer station operation
 - iv. Recycling center operation
 - v. Disposal of all waste
 - vi. Marketing and processing of recyclables
 - vii. Composting program
 - viii. Franchise fees collection and administration
 - ix. Planned capital improvements
 - x. Operations and administration program
 - xi. Additional positions
- d. Recommendations shall also consider annual inflationary and indexed adjustments that address the overall policy direction outlined herein.
- e. The study is to be performed in conformance with the following policy directions:
- i. The recommended rate structures shall be based on cost of service and shall be sufficient to meet the current and future revenue requirements of the City of Fayetteville's Recycling and Trash Division.
 - ii. The study shall recommend rate structures that consider and make provisions for the following factors:
 - 1. Achieving the goals outlined in the Recycling and Trash Collection Master Plan adopted in February 2017
 - 2. Current and future estimated costs to provide solid waste services in accordance with established and anticipated standards and regulations in addition to the adopted Solid Waste Reduction, Diversion, and Recycling Master Plan (available at: <https://www.fayetteville-ar.gov/1907/Recycling-and-Trash-Master-Plan>)
 - 3. Projected demands
 - 4. Age and condition of fleet
 - 5. Funding requirements for future facility and equipment upgrades
 - iii. The recommended rate structures shall provide direct identification of revenues appropriated to major funded activities and infrastructure.
 - iv. The study shall provide at least two (2) recommended rate alternatives for solid waste services based upon standard rate practice that meet the criteria outlined above. The consultant will make recommendations as to which alternative best meets the criteria.
 - v. The benefits of any proposed modifications shall be weighed against the financial impacts on rate payers.
 - vi. Justification of differences in proposed rate structures for different classes of customers shall be provided.

- vii. The recommended rate structures shall result in no decrease in stability of the revenue stream, as compared to the current structure. Consideration shall be given to funding past and future depreciation such as the necessary replacement or upgrade of facilities/equipment.
 - viii. The recommended rate structures shall be easy to administer and understand and shall be fully compatible with the City's existing billing system.
 - ix. The recommended rate structure shall be provided through the next five (5) years.
- f. In making rate structure recommendations, the final report shall explicitly include the following elements and analysis for the provided solid waste services:
- i. Current Rate Structure – Assess the current rate structure's performance as a baseline for comparing and justifying recommended changes.
 - ii. Equity – Assess the equity of recommended rate structures for all types of property ownership and user classes.
 - iii. Sensitivity Analysis – Assess the ability of the revenue stream generated by the recommended rate structures to continue to fully fund recycling and trash collection service costs. Include a sensitivity analysis where the long-term revenue generated under each alternative shall be illustrated when confronted with the impacts of growth or increased demand.
 - iv. Rate Payer Education and Communication – Recommend methods for communicating utility costs, including utility bill layout and how it might be used to identify actual costs of providing recycling and trash collection services.
 - v. Annual Enterprise Fund Balance Targets
 - vi. Annual Target Contingency Fund Balances and Level of Liquidity
 - vii. Budgeting Horizon and Cycle – Assess the appropriate budgeting horizon and cycle needed to support recommended rate structures
 - viii. Comprehensive Summary of Recommended Rate Structures – Asses the performance of each recommended rate structure over time and provide recommendations on the preferred rate structure.
 - ix. Supporting Data – Provide data supporting conclusions and observations made for each of the areas above and cite within the study.

3. SERVICES TO BE PROVIDED BY THE CITY:

City of Fayetteville staff will provide all reasonably available records and information, including, but not limited to financial reports, historical costs and budgets, demand and consumption data, and general community demographics. City staff will also provide general staff support and assistance as required and agreed to in advance of the project.

4. PROPOSAL REQUIREMENTS:

Proposers shall include the following with RFP response:

- a. General information including:
 - i. Name and address of firm

- ii. Number of years firm has been in business operating under current name
- iii. Other names (if applicable), including parent company name(s) by which Proposer's organization has been known and the length of time known by each name.
- iv. Current insurance coverage
- b. Knowledge of applicable regulations and local conditions
- c. Understanding of project and proposed project approach with desired outcomes:
 - i. Describe firm's anticipated approach to project and any special ideas, techniques, and/or suggestions that may add value to the project.
- d. Experience and performance records:
 - i. Provide a history of firm's experience providing services consistent with those described herein.
 - ii. Provide names of municipal clients for which firm has provided similar services in the last five (5) years.
 - iii. Provide name and contact information for three (3) municipal references who can discuss firm's work on past plans, studies, and/or projects.
- e. Project personnel assignments and qualifications:
 - i. Identify firm's primary contact and project manager for this project. Project manager shall be actively involved in all phases of the project and shall function as the City's primary point of contact for firm. Include, name, title, resume, and contact information.
 - ii. Provide name, title, resume, contact information, skills, experience, credentials, and unique qualifications of key personnel that will be assigned to this project.
 - iii. Provide an organizational chart depicting anticipated relationships between key personnel described above and the City of Fayetteville.
- f. Timeline:
 - i. Provide proposed plan/schedule for completing the project. A shorter timeline will be given more consideration when evaluating proposals.

4. COST PROPOSAL:

Cost proposal shall be for all services, materials, supplies, and any other items or requirements necessary to complete the work. Estimated expenses shall be included. Proposer shall submit hourly rates for any additional services offered.

5. PROPOSAL CONTENT:

Proposals shall be prepared simply and economically, providing a straightforward, concise description its ability to meet the requirements for the project. Fancy bindings, colored displays, and promotional material are not required. Emphasis should be on completeness and clarity of content. All documents should be typewritten on standard 8 1/2" x 11" white pages and bound in one volume. Exceptions would be schematics, exhibits, or other information necessary to facilitate the City of Fayetteville's ability to accurately evaluate the proposal. Limit proposal to twenty-five (25) pages or less, excluding one-page team resumes, references, and forms required by the City for completion.

6. CONTRACT FORMATION:

If the negotiation produces mutual agreement, a contract will be considered for approval by the City of Fayetteville City Council. If negotiations with the highest-ranking Proposer fail, negotiations may be initiated with the next highest-ranking Proposer until an agreement is reached. The City reserves the right to reject all offers and end the process without executing a contract.

7. SELECTION CRITERIA:

The following criteria will be used by the City to evaluate and score responsive proposals. Proposers shall include sufficient information to allow the City to thoroughly evaluate and score the proposal. Each proposal submitted is not required to be ranked by the selection committee. The contract may be awarded to the most qualified firm, per the evaluation criteria listed below, based on the evaluation of the selection committee. Following the evaluation of the proposals, the Selection Committee may request that the top-ranking firm(s) make an oral presentation or be interviewed. If presentations are necessary, they will take place in Fayetteville, Arkansas. Notices will be sent by the Purchasing Division.

- 1) 25% **Qualifications in Relation to Specific Project to be Performed:** Information reflecting qualifications of the consultant, partners, and project team. Indicated specialized experience and technical competence of the firm in connection with the type and complexity of the service required. Subcontractors, if used, shall be listed with information on their organization.
- 2) 25% **Experience, Competence, and Capacity for Performance:** Information reflecting the names, titles, and qualifications (including experience and technical competence) of the major personnel assigned to this specific project.
- 3) 10% **Proposed Method of Doing Work:** A proposed work plan (description of how the project would be conducted as well as other facts concerning approach to scope) indicating methods and schedules for accomplishing scope of work. Include with this the amount of work presently underway.
- 4) 25% **Past Performance:** Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, the professional firm's past performance records with City and others will be used, including quality of work, timely performance, diligence, and any other pertinent information. Firm will provide a list of similar jobs performed and person whom the City can contact for information.
- 5) 15% **Cost/Fees:** Complete costs and fees as described in this RFP and for delivery of the proposal including fiscal feasibility and financial stability. All fees shall be clearly identified with RFP response and be itemized as much as possible.

9. **ADDITIONAL DOCUMENTS AND INFORMATION:** The following information is included with this solicitation as additional information:

a. Online Resources:

- i. Fayetteville Code of Ordinances – Chapter 50:
https://library.municode.com/ar/fayetteville/codes/code_of_ordinances?nodeId=CD_ORD_TIT_VPUWO_CH50RETRCO
- ii. Current RTC Rates:
<https://www.fayetteville-ar.gov/3558/Rates>
- iii. Fayetteville Recycling & Trash Master Plan:
<https://www.fayetteville-ar.gov/1907/Recycling-and-Trash-Master-Plan>
- iv. Climate Action Plan:
<https://www.fayetteville-ar.gov/4260/Climate-Action-Plan>

b. Appendices to RFP:

- i. Appendix A: Transportation Organizational Chart

Appendix C
RFP 24-08, RTC Rate Study
City Issued RFP

CONTINTUES ON NEXT PAGE

1. DISCLOSURE INFORMATION

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

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

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

_____ 1) NO KNOWN RELATIONSHIP EXISTS

_____ 2) RELATIONSHIP EXISTS (Please explain):

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

Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.

Pursuant Arkansas Code Annotated §25-1-1002, the Contractor agrees and certifies that they do not currently boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-1002. If at any time during the contract the contractor decides to boycott Energy, Fossil Fuel, Firearms, and/or Ammunition Industries, the contractor must notify the contracted public entity in writing.

2. PRIMARY CONTACT INFORMATION

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews. **NOTE: Each Proposer shall submit to the City a primary contact name, e-mail address, and phone number (preferably a cell phone number) where the City selection committee can call for clarification or interview via telephone.**

Corporate Name of Firm: _____

Primary Contact: _____ Title of Primary Contact: _____

Phone#1 (cell preferred): _____ Phone#2: _____

E-Mail Address: _____

3. ACKNOWLEDGEMENT OF ADDENDA

Acknowledge receipt of addenda for this invitation to bid, request for proposal, or request for qualification by signing and dating below. All addendums are hereby made a part of the bid or RFP documents to the same extent as though it were originally included therein. Proposers/Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject Contractor to disqualification.

ADDENDUM NO.	SIGNATURE AND PRINTED NAME	DATE ACKNOWLEDGED

4. DEBARMENT CERTIFICATION:

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

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

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

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

NAME OF COMPANY: _____

PHYSICAL ADDRESS: _____

MAILING ADDRESS: _____

TAX ID #: _____ AR. SECRETARY OF STATE FILING #: _____

PHONE: _____ FAX: _____

E-MAIL: _____

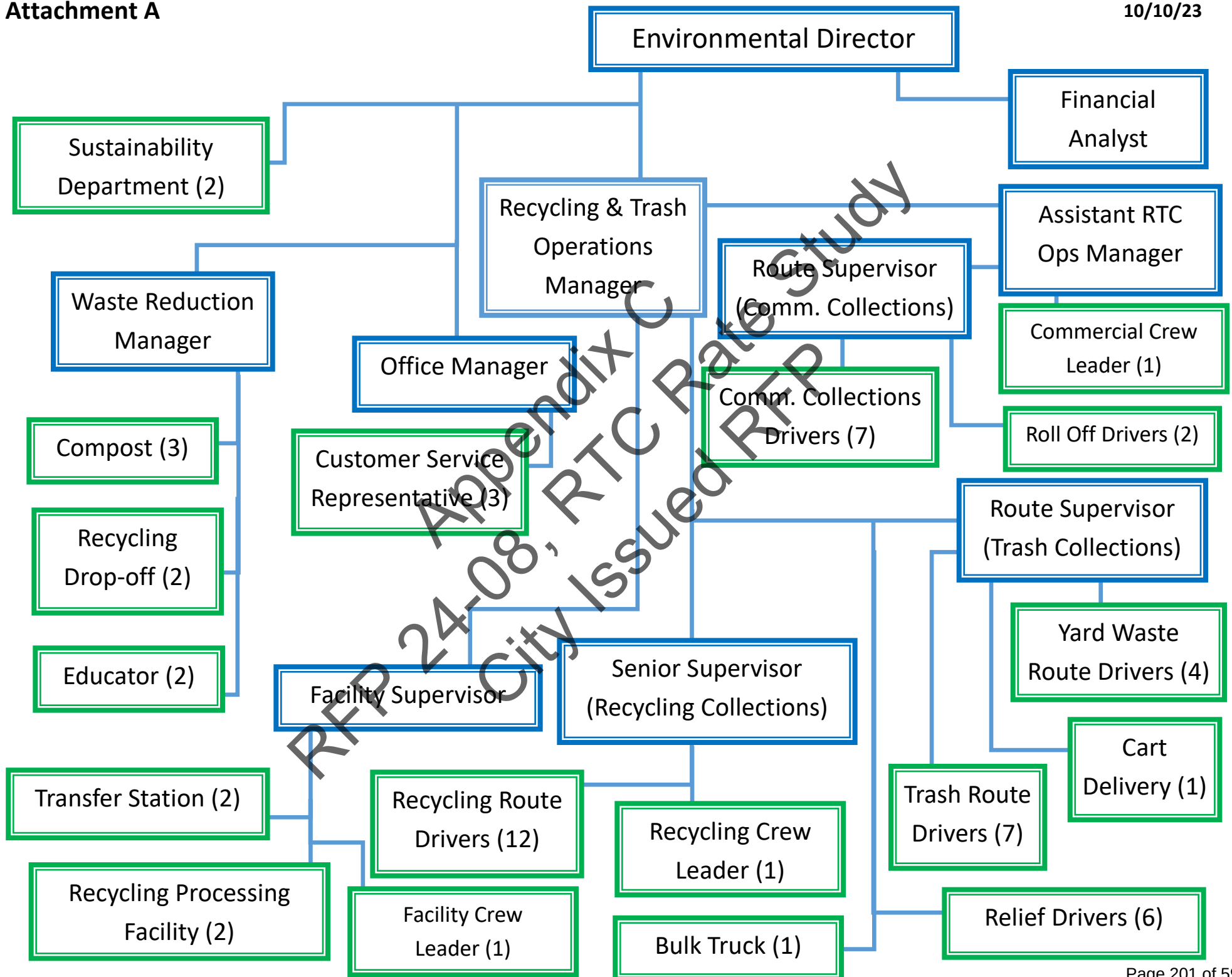
SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ DATE: _____

RFP 24-08, RTC Rate Study
Appendix C
City Issued RFP

END OF RFP DOCUMENT



RFP 24-08, Addendum 1



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Thursday, April 4, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-08 – Recycling and Trash Collection Rate Study

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. Clarifications:

- a. The following items will NOT count toward the 25-page limitation:
 - i. Cover and Cover Letter
 - ii. Appendix/Table of Contents
 - iii. Resumes (shall be no more than 2 pages per person)
 - iv. References
 - v. City provided forms
- b. Cost Proposal shall be included as part of the RFP response.

2. PROPOSAL DEADLINE HAS BEEN EXTENDED. All Proposals shall be received by Tuesday, April 16th before 2:00 PM, local time.

RFP 24-08, Addendum 2



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Tuesday, April 9, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-08 – Recycling and Trash Collection Rate Study

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. Questions: The following questions have been received and answered by the corresponding department:

- a. Question: Will the project require a City Council presentation? If so, should this be included in the project scope of work and budget?
 - i. *Answer: Yes, there will need to be a City Council presentation and should be included with proposal.*
- b. Question: What is the City's preferred project schedule length?
 - i. *Answer: It is anticipated 6-9 months long.*
- c. Question: Is there a contract available for our review beyond the conditions provided within the RFP?
 - i. *Answer: Attached to this addendum is a draft Contract for this project. This is a draft; the final Contract will be negotiated with awarded Proposer.*



This contract executed this ____ day of _____, 2024, between the City of Fayetteville, Arkansas (**City**), of 113 W. Mountain, Fayetteville, AR 72701 and ****Contractor**** (**CONTRACTOR**) of **** Insert Address****, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Purpose: The purpose of this Contract is to provide the terms and conditions necessary for the completion of a Recycling and Trash Collection Rate Study for the City of Fayetteville (the “Project”), as defined in the scope of work of RFP 24-08, Recycling and Trash Collection Rate Study.
2. Contract Documents: The Contract documents which comprise the contract between the City of Fayetteville and **CONTRACTOR** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - a. Appendix A: Scope of Work & Fees
 - b. Appendix B: City Issued Solicitation for RFP 24-08, Recycling and Trash Collection Rate Study
 - c. Appendix C: **CONTRACTOR**’s RFP Submittal
 - d. Appendix D: **CONTRACTOR**’s Certificate of Insurance
3. City’s Responsibilities:
 - a. The City shall make available to **CONTRACTOR**, all relevant information or data it has pertinent to the Project which is required by **CONTRACTOR** to perform the Services. **CONTRACTOR** shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the City, including information and data originating with other consultants employed by the City whether such consultants are engaged at the request of **CONTRACTOR** or otherwise. Where such information or data originates either with the City or its consultants then **CONTRACTOR** shall not be responsible to the City for the consequences of any error or omission contained therein.
 - b. When requested by **CONTRACTOR**, the City may engage specialist consultants directly to perform items of work necessary to enable **CONTRACTOR** to carry out the Services. Whether arranged by the City or **CONTRACTOR**, these services shall be deemed to be provided under direct contracts to the City unless expressly provided otherwise. If the City chooses not to engage specialist consultants, then the Parties will work cooperatively to modify the scope of services to reflect any reductions or additions to the services to be provided by **CONTRACTOR**.

- c. The City shall give prompt consideration to all documentation related to the Project prepared by **CONTRACTOR** and whenever prompt action is necessary shall inform **CONTRACTOR** of City's decisions in such reasonable time so as not to delay the schedule for providing the Services.
- d. The City of Fayetteville's Environmental Director is the project representative with respect to the services to be performed under this Agreement. The Environmental Director shall have complete authority to transmit instructions, receive information, interpret and define policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

4. CONTRACTOR's Responsibilities:

- a. **CONTRACTOR** shall furnish the necessary qualified personnel to provide the Services. **CONTRACTOR** represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, **CONTRACTOR** will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure **CONTRACTOR** 's performance. There are no other representations or warranties expressed or implied made by **CONTRACTOR**. In particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply to the Services provided by **CONTRACTOR** nor shall **CONTRACTOR** warrant or guarantee economic, market or financial conditions, proforma projections, schedules for public agency approvals, or other factors beyond **CONTRACTOR** 's reasonable control.

- 5. Non-Assignment: **CONTRACTOR** shall not assign its duties under the terms of this agreement without prior written consent of the City.

6. Indemnification and Hold Harmless:

- a. **CONTRACTOR** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, but not defend, against any and all claims for property damage, personal injury or death, arising from **CONTRACTOR's** performance under this contract. This clause shall not, in any form or manner, be construed to waive that tort immunity set forth under Arkansas Law.
- b. Notwithstanding anything to the contrary, the total amount of all claims the City of Fayetteville may have against **CONTRACTOR** under this contract or arising from the performance or non-performance of the services under any theory of law, including but not limited to claims for

negligence, negligent misrepresentation and breach of contract, shall not exceed \$500,000. As the City of Fayetteville's sole and exclusive remedy under this contract any claim, demand or suit shall be directed and/or asserted only against **CONTRACTOR** and not against any of **CONTRACTOR's** employees, officers or directors. Neither the City of Fayetteville nor **CONTRACTOR** shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this contract or the performance of the services on this project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

7. Insurance: **CONTRACTOR** shall furnish a certificate of insurance addressed to the City of Fayetteville within ten (10) calendar days after contract finalization, presenting insurance which shall be maintained throughout the term of the Contract in compliance with the terms of RFP 24-08. If applicable, **CONTRACTOR** shall require any subcontractor to provide insurance. In the event any employee engaged in work on the project under this contract is not protected under Worker's Compensation insurance, **CONTRACTOR** shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of their employees are not otherwise protected. Worker's Compensation coverage shall be applicable with state law.

8. Price:

- a. **CONTRACTOR** shall perform the services included in this proposal for a not-to-exceed fee of \$ _____.
 - i. **CONTRACTOR** shall strive to make decisions based on what is best for the City. As such, the **CONTRACTOR** compensation is structured as a not-to-exceed fee, with billing to be completed on a monthly basis until completion of project. Monthly invoice shall include a breakdown of completed tasks and/or deliverables for the previous month.
- b. Additional services requested that fall outside the scope of this project shall be provided on a time-and-materials basis, subject to pre-approval.

9. Payments:

- a. Payments shall be made after approval and acceptance of each itemized invoice, which shall not be unreasonably withheld.
- b. Unless disputed by the City, payments shall be made **30 calendar days after acceptance of invoice**. Electronic delivery to the City is preferred.

10. Terms: All work as required in the Appendix A – Scope of work shall be completed within _____ calendar days of contract approval from Fayetteville City Council.

11. Ownership of Documents:

- a. All documents provided by the City are and remain the property of the City. **CONTRACTOR** may retain reproduced copies of drawings and copies of other documents.
- b. All documents and records, whether in physical or electronic format, prepared by **CONTRACTOR** or its subconsultant as part of the Project shall become the property of City; provided, however, that **CONTRACTOR** shall have the unrestricted right to their use.
- c. **CONTRACTOR** shall retain its rights in its standard document details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of **CONTRACTOR**.
- d. **CONTRACTOR** will grant the City, the State of Arkansas, and the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this agreement by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

12. Independent Contractor: **CONTRACTOR** is an independent contractor of the City and shall maintain complete responsibility for applicable state or federal law on unemployment insurance, withholding taxes, social security, or other industrial, labor or discrimination law for its employees. **CONTRACTOR** is responsible for its agents, sub-consultants, methods, and operations.

13. Notices: Any notice required to be given under this Agreement to either party to the other shall be sufficient if addressed and mailed, certified mail, postage paid, delivery, e-mail or fax (receipt confirmed), or overnight courier.

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

15. Termination: This Contract may be terminated by the City of Fayetteville or **CONTRACTOR** for any reason with thirty (30) days written notice. If either party breaches this agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to remedy the breach. On termination

of this agreement, the City shall pay **CONTRACTOR** for the services performed through the date of termination within thirty (30) days of acceptance of final invoice.

16. Changes in Scope or Price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees. No modification of this contract shall be binding unless made in writing and executed by both parties.
17. Applicable Law: This Agreement shall be governed by and construed in accord with the laws of the State of Arkansas. Venue for all legal disputes shall be Washington County, Arkansas.
18. Contract Administration: The Mayor or their Designated Representative shall be the Contract Administrator for this contract. **CONTRACTOR's** Principal or their Designated Representative shall be the primary contact for all matters pertaining to this contract.
19. Professional Responsibility: **CONTRACTOR** shall exercise reasonable skill, care, and diligence in the performance of services and will carry out its responsibilities in accordance with customarily accepted professional practices.
20. Permits & Licenses: **CONTRACTOR** shall secure and maintain any and all permits and licenses required to complete this Contract.
21. Publications: Recognizing the importance of professional development on the part of **CONTRACTOR's** employees and the importance of **CONTRACTOR's** public relations **CONTRACTOR** may prepare publications, such as technical papers, articles for periodicals, promotional materials, and press releases, in electronic or other format, pertaining to **CONTRACTOR's** services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to **CONTRACTOR**. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. Approved materials may be used in a variety of situations and do not require additional review or approval for each use. The cost of **CONTRACTOR's** activities pertaining to any such publication shall be for **CONTRACTOR's** account.
22. Entire Agreement: These Contract documents constitute the entire agreement between the City of Fayetteville and **CONTRACTOR** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **CONTRACTOR**. In the event of a conflict between the terms of this Contract and the appendices, this Contract and the terms and conditions contained in Appendix B shall control.

23. Force Majeure: Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic, or any other cause beyond the reasonable control or contemplation of either party. Nothing herein relieves the City of its obligation to pay **CONTRACTOR** for services actually rendered.

24. Severability: In the event that any court of competent jurisdiction shall determine that any provision of this agreement shall be unenforceable, then that provision shall be deemed to be null and void and the remaining provisions hereof shall remain in full force and effect.

25. Debarment Certification: **CONTRACTOR** hereby provides debarment/suspension certification indicating compliance with the below Federal Executive Order. Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. **CONTRACTOR** hereby attests its principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

IN WITNESS WHEREOF, **CITY OF FAYETTEVILLE, ARKANSAS** by and through its Mayor, and **** CONTRACTOR **** by its authorized officer has made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

**** CONTRACTOR ****

By: _____

LIONELD JORDAN, MAYOR

By: _____

NAME OF AUTHORIZED SIGNER, TITLE

ATTEST:

By: _____

Kara Paxton, City Clerk

Date Signed: _____

Date Signed: _____

RFP 24-08, Addendum 3



CITY OF
FAYETTEVILLE
ARKANSAS

Date: Monday, April 15, 2024

To: All Prospective Vendors

From: Amanda Beilfuss – 479.575.8220 – abeilfuss@fayetteville-ar.gov

RE: RFP 24-08 – Recycling and Trash Collection Rate Study

This addendum is hereby made a part of the contract documents to the same extent as though it were originally included therein. Interested parties should indicate their receipt of same in the appropriate blank of the RFP. **PROPOSERS SHOULD ACKNOWLEDGE THIS ADDENDUM ON THE DESIGNATED LOCATION ON THE BID PORTAL/FORM.**

1. Questions: The following questions have been received and answered by the corresponding department:

- a. Question: Is this study a regular rate verification and resetting study or some other factors are the impetus behind this?
 - i. Answer: Yes, this is a regular rate verification and resetting study.
- b. Question: Is the address and services data clean? Or is a data validation analysis required as part of the project?
 - i. Answer: Yes, address and service data are clean.
- c. Question: Will the employee/asset utilization data be available? Or will an analysis to determine this be required?
 - i. Answer: Yes, that data will be available.
- d. Question: For the sensitivity analysis, are the factors and time span known? Or will an interaction-effect analysis of determining the dominant factors and their relationships be required?
 - i. Answer: Yes, the factors and time span are known.
- e. Question: Is there a routing system in place with historical routes, times, and resources data?
 - i. Answer: Yes.
- f. Question: Is the analysis of business processes of DPW affecting the services management, billing and other processes are of interest?
 - i. Answer: No.

- g. Question: Is the analysis to set equity basis (segmentation) for the customer type part of the analysis? For example, certain customer types may be given discounts, and some may be charged more for the same service.

i. Answer: Yes, information about equity impacts would be beneficial.

- h. Question: Are the policies defining the feasibility of the ranges of the rate available? For example, is there a policy stating that a new rate for the curbside collection for a single-family home cannot exceed X% compared to the current rate?

i. Answer: No, the City does not have a policy regarding this.

- i. Question: What is the expected timeframe to get this study done? Are there any significant deadlines that need to be met?

i. Answer: Please refer to Addendum 2. There are no specific deadlines for this project.

Appendix C
RFP 24-08, RTC Rate Study
City Issued RFP



MEETING OF AUGUST 13, 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: **Administrative Item (Amend UDC Chapters 166.02, Development Review Process, 167.04 Tree Preservation and Protection): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.02 and 167.04. The proposed code changes would modify development requirements associated with tree preservation requirements. (Originally heard with ADM-2024-0028).**

RECOMMENDATION:

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending §166.02, Development Review Process and 167.04 Tree Preservation and Protection.

BACKGROUND:

In 2021, major ordinance changes were approved by City Council to revamp drainage and development standards, with a secondary goal of incentivizing infill. The changes that were approved required new green stormwater practices on a sliding scale of added impervious surface, and decoupled certain requirements from a question of use and tied those requirements instead to the overall impact to stormwater. This introduced three new levels of development threshold and shifted the requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 sq. ft. of added, new impervious surface.

In the intervening period since 2021, staff audited the outcomes of these changes, and identified four main areas that require revision and clarification. Those areas for study, and their current status, are listed below.

- **Parkland Dedication**
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant. Proposed ordinance changes were already evaluated, reviewed, and approved by City Council on May 21, 2024.
- **Project Classification**
 - Projects adding less than 10,000 sq. ft. still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting. These changes are still pending Planning Commission review and approval, though staff anticipates they will be heard by the Planning Commission on July 22, 2024. A separate item will be brought forth with these changes.
- **Application of Tree Preservation standards**
 - Certain projects are no longer subject to tree preservation requirements. Staff and the Planning

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

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Commission are recommending changes to this ordinance with this item, and they are described below.

- **Timeliness of Variances and Appeals**

- Variances are only permitted to be appealed with an overall project, rather than piecemeal. This becomes an issue when certain development types are no longer subject to large-scale development or site improvement plan. Staff and the Planning Commission are recommending changes to this ordinance which will be heard at the July 16 City Council meeting.

DISCUSSION:

Application of Tree Preservation standards:

To address tree preservation concerns, staff, the Long-Range Planning Committee, and the Planning Commission propose requiring an abbreviated tree preservation plan to projects adding between 1,200 and 6,000 sq. ft. of impervious surface. Urban Forestry staff have found that larger, multi-unit structures on smaller infill sites are no longer required to perform any tree preservation, mitigation, or even escrow, even if the impact to the canopy is significant. To help alleviate concerns about requiring additional tree preservation to smaller sites, staff also recommends an option for projects within this threshold to be evaluated for a tree escrow contribution.

At the June 24, 2024 Planning Commission meeting, Commissioners voted 7-1-0 to forward the proposed ordinance changes to the City Council with a recommendation of approval. Commissioner Garlock made the motion, which was seconded by Commissioner Cabe; Commissioner Brink voted in opposition. Commissioners considered how to balance any potentially negative effects of adding tree preservation requirements to smaller infill projects, ultimately finding that the language offered to consider escrow for smaller projects was acceptable. When asked, Urban Forestry and Planning staff clarified that the proposed tree preservation changes were meant to protect the integrity of the scaled approach to tree preservation in the City (with a priority for preservation, mitigation, and finally escrow), but offer payment into escrow for trees that could not be preserved as an option for earlier consideration for those smaller projects.

One member of the public spoke at the meeting with concerns about the effects of proposed changes on infill with regards to the proposed development thresholds (which were not under consideration at the June 24 meeting), and concerns that requiring an abbreviated tree preservation plan for projects between 1,200 and 6,000 sq. ft. of impervious surface would lead to project delays and disincentivize infill. The member of the public wanted escrow to be considered as the primary option for those projects.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Proposed Ordinance – Exhibit “A” (#4), Proposed Ordinance Amendment in Strikeout/Highlight (#5), Planning Commission Staff Report (#6), Urban Forestry Advisory Board Support for Code Changes - Final (#7)

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City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-328

Administrative Item (Amend UDC Chapters 166.02, Development Review Process, 167.04 Tree Preservation and Protection): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.02 and 167.04. The proposed code changes would modify development requirements associated with tree preservation requirements. (Originally heard with ADM-2024-0028).

AN ORDINANCE TO AMEND § 166.02 DEVELOPMENT REVIEW PROCESS AND § 167.04 TREE PRESERVATION AND PROTECTION OF THE UNIFIED DEVELOPMENT CODE TO MODIFY DEVELOPMENT REQUIREMENTS ASSOCIATED WITH TREE PRESERVATION REQUIREMENTS

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.02 **Development Review Process** (E)(2) Level 2 and enacts a new § 166.02 (A) as follows:

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O&M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. - Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf	Same as Level 2.	- Same as Level 2. - As needed GSP measures from

of IA	Step 3 to further reduce runoff referred to as extended detention • Abbreviated Tree Preservation Plan
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Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 167.04 **Tree Preservation And Protection During Development** (A)(11) and enacts a new § 167.04 (A)(11) as follows:

“Building Permits. Tree preservation requirements apply to all permit applications for developments of greater than 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in § 167.04 (H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 167.04 **Tree Preservation And Protection During Development** (A)(12)(a) and enacts a new § 167.04 (A)(12)(a) as follows:

“Person seeking to construct 1,200 square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 167.04 **Tree Preservation And Protection During Development** (H)(3) and enacts a new § 167.04 (H)(3) as follows:

“Abbreviated Tree Preservation Plan. Applicants requesting approval of development projects for between 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and/or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.”

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 167.04 **Tree**

Preservation And Protection During Development (J)(4) and enacts a new § 167.04 (J)(4) as follows:

“(a) Developments proposed as building permits under Level 2 as outlined in § 166.02 (E)(2) are eligible for contribution to the tree escrow account as an option.

(b) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.

(c) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.

(d) Money contributed under this section:

(i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

(ii) Shall not revert to the general fund for ongoing operations.

(e) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.

(f) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.

(g) Refunds shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(h) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.

(i) The refund shall be made on a pro rata basis and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.

(j) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.”

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 167.04 **Tree Preservation And Protection During Development (L)(1)** and enacts a new § 167.04 (L)(1) as follows:

“Large scale developments, large site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing trees are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the

minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large and small site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.”

City of Fayetteville Staff Review Form

2024-328

Item ID

7/16/2024

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

Jonathan Curth

6/28/2024

DEVELOPMENT SERVICES (620)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Administrative Item (Amend UDC Chapters 166.02, Development Review Process, 167.04 Tree Preservation and Protection): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.02 and 167.04. The proposed code changes would modify development requirements associated with tree preservation requirements. (Originally heard with ADM-2024-0028).

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:

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district, preliminary plat, final plat, and concurrent plat. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C).
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Preliminary plat, concurrent plat, and planned zoning district with development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

-
- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
 - (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
 - (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

(2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

(1) Before a building permit is issued the developer shall:

- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
- (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
- (c) Comply with all applicable zoning and development codes.
- (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.

(2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. - Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct 1,200square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area.* In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1 Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

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- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
- (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
- (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
- (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
- (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

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- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

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- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and/or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
- (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
- (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
- (a) The number of trees requested for removal;

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- (b) The percentage below the percent minimum canopy requirement they represent; and
 - (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
- (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
- (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

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- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
- (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

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- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits creating between 1,201 – 6000 square feet of impervious surface under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - (b) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (c) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (d) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

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- (ii) Shall not revert to the general fund for ongoing operations.
 - (e) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
 - (f) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
 - (g) Refunds shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
 - (h) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
 - (i) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (j) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large and small site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing

the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824, §3, 11-17-15; Ord. No. 5945, §17, 1-17-17; Ord. No. 5986, §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442, §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446, §9(Exh. D), 6-15-21)

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district, preliminary plat, final plat, and concurrent plat. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C).
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Preliminary plat, concurrent plat, and planned zoning district with development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

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- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
 - (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
 - (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

(2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

(1) Before a building permit is issued the developer shall:

- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
- (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
- (c) Comply with all applicable zoning and development codes.
- (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.

(2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than ~~6,000~~ 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, ~~or~~ large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct ~~6,000~~ 1,200-square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area.* In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1 Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

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- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
- (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
- (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
- (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
- (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

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- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

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- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between ~~6,001~~ 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
- (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
- (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
- (a) The number of trees requested for removal;

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- (b) The percentage below the percent minimum canopy requirement they represent; and
 - (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
- (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
- (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

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- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
- (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

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- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - (ba) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (cb) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (de) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

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- (ii) Shall not revert to the general fund for ongoing operations.
- (ed) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
- (fe) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
- (gf) Refunds shall be paid to ~~the applicant who made the original contribution~~ the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
- (hg) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
- (ih) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- (ii) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
- (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
- (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
- (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large ~~scale~~ site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large ~~scale~~ and small site improvements, commercial

final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824 , §3, 11-17-15; Ord. No. 5945 , §17, 1-17-17; Ord. No. 5986 , §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442 , §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446 , §9(Exh. D), 6-15-21)



TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager
City of Fayetteville Long Range Planning Committee

MEETING DATE: June 24, 2024 **Updated with results from 6/24/2024 PC Meeting**

SUBJECT: **ADM-2024-0028: Administrative Item (Amend UDC Chapters 155, Appeals, 166.02, Development Review Process, 166.23, Urban Residential Design Standards, 167.04 Tree Preservation and Protection):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 155, 166.02, 166.23, and 167.04. The proposed code changes would modify development requirements associated with appeals, architectural design standards, and tree preservation requirements.

RECOMMENDATION:

Staff recommend forwarding **ADM-2024-0028** to the City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **ADM-2024-0028** to the City Council with a recommendation of approval."*

BACKGROUND:

In 2021, major ordinance changes were approved by City Council to revamp drainage and development standards, with a secondary goal of incentivizing infill. The changes that were approved required new green stormwater practices on a sliding scale of added impervious surface, and decoupled certain requirements from a question of use and tied those requirements instead to the overall impact to stormwater. This introduced three new levels of development threshold and shifted the requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 sq. ft. of added, new impervious surface. In the intervening period since 2021, staff audited the outcomes of these changes, and identified several areas that require revision and clarification.

- **Parkland Dedication**
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant.
- **Project Classification**
 - Projects adding less than 10,000 sq. ft. still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting.
- **Application of Tree Preservation standards**
 - Certain projects are no longer subject to tree preservation requirements.
- **Timeliness of Variances and Appeals**
 - Variances are only permitted to be appealed with an overall project, rather than piecemeal. This becomes an issue when certain development types are no longer subject to large-scale development or site improvement plan.

Recognizing immediate financial implications, staff proposed changes to the parkland dedication ordinance already, which were forwarded by the Planning Commission to the City Council. Those changes were approved by the City Council on May 21, 2024. At the May 13, 2024 Planning Commission, additional proposed changes to the remaining sections were brought forward by staff for the Commission's consideration, where they were tabled indefinitely with a vote of 5-2-0 in order to keep working on the item and understand the full context of the changes. Staff brought the items back to the Long-Range Planning Committee on May 23, 2024. At that meeting, the Long-Range Planning Committee agreed to bring forward proposed changes to the appeals section, the application of tree preservation standards, and text changes in the Urban Residential Design standards, which are presented for consideration here. Since the items have been separated out, staff is bringing forward a new item with just those pieces for the Commission's consideration.

DISCUSSION:

To address tree preservation concerns, staff and the Long-Range Planning Committee propose requiring an abbreviated tree preservation plan to projects adding between 1,200 and 6,000 sq. ft. of impervious surface. Urban Forestry staff have found that larger, multi-unit structures on smaller infill sites are no longer required to perform any tree preservation, mitigation, or even escrow, even if the impact to the canopy is significant. To help alleviate concerns about requiring additional tree preservation to smaller sites, staff also recommends an option for projects within this threshold to be evaluated for a tree escrow contribution.

The City Attorney's office also recommends changes to the appeals section of code. Variances, as currently written in the appeals portion of code, can only be appealed with the overall project, such as an SIP, LSIP, or LSD. As certain projects no longer require these preliminary project approvals before permitting, variances can only be appealed once a permit is issued. Staff is recommending that variances can be appealed independently from an overall project, in those instances where an SIP, LSIP, or LSD, or other preliminary development entitlement approval is not required.

Public Comment: Staff distributed the larger ordinance changes to key stakeholders within the development community. Feedback was received in relation to vested interest of projects that may already be in the pipeline, and feedback was received in relation to parkland dedication requirements. The City Attorney's office confirmed that vested interest in this or is any ordinance change happens at the time of an approved or issued permit. One Planning Commissioner suggested that the threshold could be shifted to the overall size of a structure rather than the amount of impervious surface. No additional written comment was offered, or alternative code changes suggested at this time. Public comment was also provided at the May 13, 2024 Planning Commission. Members of the public who spoke were more concerned about the proposed changes to the impervious surface thresholds, which are not under consideration at this time. No additional public comment has been received by staff.

RECOMMENDATION: Staff recommend forwarding ADM-2024-0028 to City Council with a recommendation of approval.

None

Attachments:

- **Proposed Ordinance (Clean):**
 - UDC §155, Appeals
 - UDC §166.02, Development Review Process
 - UDC §166.23, Urban Residential Design Standards
 - UDC §167.04, Tree Preservation and Protection
- **Proposed Ordinance (Strikethrough):**
 - UDC §155, Appeals
 - UDC §166.02, Development Review Process
 - UDC §166.23, Urban Residential Design Standards
 - UDC §167.04, Tree Preservation and Protection

CHAPTER 155: APPEALS

155.01 Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error and how the applicant is adversely impacted.
- (B) *Time.*
 - (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
 - (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the Construction Board of Adjustment and Appeals , [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Council Member Appeal On Behalf Of Resident

A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval or denial of a development proposal. Variances, compliance with applicable design standards, tree preservation

plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342 , §1, 8-4-20)

155.05 Appeals From Planning Commission Decisions

(A) *Appeals to City Council*

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests in accordance with the procedure set forth in §155.02:
 - (a) Annexation;
 - (b) Rezoning;
 - (c) Required dedication and improvements of §155.06(C);
 - (d) Subdivision (plats, lot splits, lot line adjustments);
 - (e) Development (large scale development, large and small site improvement plans);
 - (f) Vacations of street right-of-way.
- (2) *Conditions of Approval/Variances, etc.* An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request. Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.
- (3) *Conditional Use Request.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01; Ord. No. 6342 , §2, 8-4-20)

155.06 Appeals From Staff Interpretations And Actions

(A) *Appeals to City Council.*

- (1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.
- (2) The Zoning and Development Administrator's decision to deny a vacation of any public easement (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

- (1) *Zoning and Development Administrator.* An interpretation or decision regarding zoning matters.

- (2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.
- (C) *Appeals to the Planning Commission.*
- (1) *Zoning and Development Administrator's Required Dedications and Improvements.*
- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, grading permit, floodplain development permit, or otherwise within ten (10) days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."
- (c) Any potential reduction of impact fees must be approved by the City Council.
- (2) *Administrative Approvals and Interpretations by Zoning and Development Administrator.*
- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively (as required by Chapter 166.02(C)) may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within ten (10) working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
- (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
- (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
- (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.

- (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
 - (d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.
 - (3) *City Engineer and Flood Plain Administrator.*
 - (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
 - (4) *Zoning and Development Administrator's Interpretation or Decision of Other Development Matters.* An interpretation or decision of the Zoning and Development Administrator regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
 - (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.
 - (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.
- (Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93; Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11; Ord. No. 6343, §1(Exh. A), 8-4-20; Ord. No. 6446, §5, 6-15-21)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.

- (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Exh. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 Reserved

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district, preliminary plat, final plat, and concurrent plat. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C).
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Preliminary plat, concurrent plat, and planned zoning district with development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

- (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
- (2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. - Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

166.23 Urban Residential Design Standards

(A) *Purposes.*

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To create appealing street scenes so that development enhances the image of the city and provides safe, pedestrian-friendly neighborhood environments.
- (3) To minimize service and parking impacts in order to preserve surrounding property values and scenic resources that contribute to the city's economic development.
- (4) To compose attractive residential facades that enhance the economic viability of and provide compatibility with surrounding property.

(B) *Applicability.* All references to urban residential design standards shall include the following uses as permitted by right or conditional use in all zoning districts:

- (1) Two (2) family dwellings
- (2) Three (3) and four (4) family dwellings
- (3) Multi-family dwellings

(C) *Site Development Standards.* The following site development standards shall apply for all urban residential development.

- (1) *Intent.* The intent of these site development standards is to create a pedestrian-friendly streetscape.
- (2) *Vehicular Access/Circulation/Parking.*
 - (a) Site access and internal circulation should promote pedestrian safety, efficiency, and convenience and minimize conflicts between vehicles and pedestrians. Continuous circulation shall be provided throughout the site to the greatest extent possible creating a complete, compact, and connected transportation network both within the development and to the surrounding neighborhood. The visual impact of parking areas should be minimized by locating parking behind buildings and internal to the site.
 - (i) Garage entries and carports shall not protrude forward from the principal facade. Driveways shall extend at least 18 feet into the property from the Master Street Plan right-of-way to allow parking to occur without encroaching into the right-of-way.
 - (ii) Parking areas should be accessed by mid-block alleys whenever possible. Developments should minimize multiple driveways and should utilize a shared access to reduce the number of vehicle conflicts at the street.
 - (iii) On-street parallel parking may be provided on at least one (1) side of the street in front of all multi-family buildings where feasible. Each on-street parking space provided along the project frontage shall count toward the total required spaces for the development.
- (3) *[Reserved.]*
- (4) *Pedestrian Circulation.*
 - (a) Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. This entry shall connect unobstructed to the public sidewalk where sidewalk exists in a manner to allow occupants to access from the interior of the structure to the city sidewalk. The connection shall match the sidewalk in material type and shall be at least 3 feet in width unless otherwise approved by the Zoning and Development Administrator in writing. The

entry may be gated and shared but must occur at a spacing of no fewer than one (1) entrance for every two (2) street level dwellings. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet from the door before connecting directly to the public sidewalk.

- (b) Urban residential projects shall incorporate pedestrian connections to adjacent residential and commercial properties where sidewalks exist unless this requirement is otherwise waived by the Planning Commission.
- (5) *Screening Requirements if Visible from the Highway/Street Right-of-Way.*
 - (a) *Mechanical and Utility Equipment.* All mechanical and utility equipment located on the wall and/or on the ground shall be screened, except for air conditioning window units. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks, unless located in a utility easement.
 - (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in urban residential developments.
 - (i) Urban residential developments are required to provide adequate space to provide both recycling and trash services for residents. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure or dedicated space for servicing recycling and trash containers. Large multi-family urban residential developments typically will be required to provide adequate space for the placement of two (2) front-end load dumpsters that are easily accessible with a minimum enclosure dimension of 24 feet wide and 12 feet deep.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are complementary to the principal structure, with access to the refuse containers not visible from the public right-of-way.
 - (c) *Screening.* Screening shall mean a view obscuring fence, berm, vegetation, architectural treatment consistent with the residential architecture, or a combination of the four of sufficient height to prevent the view of the screened items from the public right-of-way. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Fencing.* The following types, height, and location of fences shall be prohibited:
 - (a) *Razor and/or Barbed Wire.* Razor and/or barbed wire fences are prohibited, unless and except barbed wire fences are used for agricultural purposes.
 - (b) *Chain Link.* Chain link fence is prohibited if closer to the street than the front of the building.
 - (c) *Height of Fences in Front of Buildings.* Fences in the front yard area shall have a maximum height of 42 inches subject to visibility requirements in Chapter 164.09 and 164.17.
- (D) *Architectural Design Standards.*
 - (1) *Intent.* The intent of these building design standards is:
 - (a) To ensure that urban residential buildings add to the character and quality of the community, offer a sense of security, and make a positive contribution to the life of the street.
 - (b) To maximize the quality, value and longevity of urban residential neighborhoods.
 - (c) To make housing appealing and comfortable for its inhabitants.

(2) *Construction and Appearance Design Standards for Urban Residential Development.*(a) *Building Form and Design.*

- (i) In order to provide a variety in form and design, one (1) building type may not be utilized more than three (3) times in a development. Each building type shall be differentiated by variations in materials, colors and roof forms.
- (ii) Ancillary structures such as carports, garages, recreational buildings and storage structures shall be designed as an integral part of the project architecture.
- (iii) The following architectural elements shall be required of all principal façades that are greater than 48 feet wide along the street frontage:
 - (a) Variations in materials;
 - (b) Insets or other relief in the wall plane;
 - (c) Incorporation of two or more of the following:
 - (1) Balconies;
 - (2) Bays or bay windows;
 - (3) Porches;
 - (4) Dormers;
 - (5) Porticoes;
 - (6) Turrets; or
 - (7) Other architectural feature approved by the Zoning Development Administrator that meets the intent of the code.
- (iv) One (1) or more of the following architectural elements shall be required of all principal façades that are 48 feet wide or less along the street frontage:
 - (a) Balconies;
 - (b) Bays or bay windows;
 - (c) Porches;
 - (d) Dormers;
 - (e) Porticos;
 - (f) Turrets; or
 - (g) Other architectural feature approved by the Zoning and Development Administrator that meets the intent of the Code.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance from the maximum requirements where unique circumstances exist and the effect will not adversely impact adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.

(Ord. No. 5118, 3-18-08; Ord. No. 5262, 8-4-09; Ord. No. 5679, 4-15-14; Ord. No. 6170 , §1, 4-2-19; Ord. No. 6357 , §§1, 2, 9-15-20; Ord. No. 6508 , §1, 11-16-21; Ord. No. 6658 , §10, 5-2-23)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct 1,200square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area*. In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1 Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
- (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
- (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
- (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
- (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and/or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
- (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
- (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
- (a) The number of trees requested for removal;

- (b) The percentage below the percent minimum canopy requirement they represent; and
- (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
 - (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
 - (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
- (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
 - (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits creating between 1,201 – 6000 square feet of impervious surface under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - (b) Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - (c) Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - (d) Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

- (ii) Shall not revert to the general fund for ongoing operations.
 - (e) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
 - (f) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
 - (g) Refunds shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
 - (h) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
 - (i) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
 - (j) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large and small site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing

the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824, §3, 11-17-15; Ord. No. 5945, §17, 1-17-17; Ord. No. 5986, §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442, §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446, §9(Exh. D), 6-15-21)

CHAPTER 155: APPEALS**155.01 Circuit Court**

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error and how the applicant is adversely impacted.
- (B) *Time.*
 - (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
 - (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the ~~Construction Board of Adjustment and Appeals Board of Adjustment~~, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 Council Member Appeal On Behalf Of Resident

A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval or denial of a development proposal. Variances, compliance with applicable design standards, tree preservation

plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342, §1, 8-4-20)

155.05 Appeals From Planning Commission Decisions

(A) Appeals to City Council

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests in accordance with the procedure set forth in §155.02:
 - (a) Annexation;
 - (b) Rezoning;
 - (c) Required dedication and improvements of §155.06(C);
 - (d) Subdivision (plats, lot splits, lot line adjustments);
 - (e) Development (large scale development, large and small site improvement plans);
 - (f) Vacations of street right-of-way.
- (2) *Conditions of Approval/Variances, etc.* An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request. Variations, compliance with applicable design standards, tree preservation plans and conditions of approval for any development not requiring approval by the Planning Commission or administrative approval by the Planning Division may be appealed independently.
- (3) *Conditional Use Request.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01; Ord. No. 6342, §2, 8-4-20)

155.06 Appeals From Staff Interpretations And Actions

(A) Appeals to City Council.

- (1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.
- (2) The ~~Development Review Manager's~~Zoning and Development Administrator's decision to deny a vacation of any public easement (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

- (B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

- (1) ~~Development Review Manager—Zoning~~Zoning and Development Administrator. An interpretation or decision regarding zoning matters.
- (2) *Building Safety Officer—Airport Zone*. Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.
- (C) *Appeals to the Planning Commission*.
- (1) ~~Development Review Manager's~~Zoning and Development Administrator's *Required Dedications and Improvements*.
- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, grading permit, floodplain development permit, or otherwise within ten (10) days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."
- (c) Any potential reduction of impact fees must be approved by the City Council.
- (2) *Administrative Approvals and Interpretations by* ~~Development Review Manager~~Zoning and Development Administrator.
- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the ~~Development Review Manager~~Zoning and Development Administrator regarding development matters that are approved administratively (as required by Chapter 166.02(C)) may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within ten (10) working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
- (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
- (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
- (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
- (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.

- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
 - (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
 - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
 - (d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.
 - (3) *City Engineer and Flood Plain Administrator.*
 - (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
 - (4) ~~*Development Review Manager's Zoning and Development Administrator's Interpretation or Decision of Other Development Matters.*~~ An interpretation or decision of the ~~Development Review Manager Zoning and Development Administrator~~ regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
 - (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.
 - (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.
- (Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162.03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93; Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11; Ord. No. 6343, §1(Exh. A), 8-4-20; Ord. No. 6446, §5, 6-15-21)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.

- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
- (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Exh. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 Reserved

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district, preliminary plat, final plat, and concurrent plat. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C).
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Preliminary plat, concurrent plat, and planned zoning district with development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

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- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
 - (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
 - (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

- (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
- (2) In addition to §166.02(E), before a building permit is issued for site that creates between 1,201 and 10,000 square feet of new impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas. Abbreviated Tree Preservation Plan
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

166.23 Urban Residential Design Standards

(A) *Purposes.*

- (1) To protect and enhance Fayetteville's appearance, identity, and natural and economic vitality.
- (2) To create appealing street scenes so that development enhances the image of the city and provides safe, pedestrian-friendly neighborhood environments.
- (3) To minimize service and parking impacts in order to preserve surrounding property values and scenic resources that contribute to the city's economic development.
- (4) To compose attractive residential facades that enhance the economic viability of and provide compatibility with surrounding property.

(B) *Applicability.* All references to urban residential design standards shall include the following uses as permitted by right or conditional use in all zoning districts:

- (1) Two (2) family dwellings
- (2) Three (3) and four (4) family dwellings
- (3) Multi-family dwellings

(C) *Site Development Standards.* The following site development standards shall apply for all urban residential development.

- (1) *Intent.* The intent of these site development standards is to create a pedestrian-friendly streetscape.
- (2) *Vehicular Access/Circulation/Parking.*
 - (a) Site access and internal circulation should promote pedestrian safety, efficiency, and convenience and minimize conflicts between vehicles and pedestrians. Continuous circulation shall be provided throughout the site to the greatest extent possible creating a complete, compact, and connected transportation network both within the development and to the surrounding neighborhood. The visual impact of parking areas should be minimized by locating parking behind buildings and internal to the site.
 - (i) Garage entries and carports shall not protrude forward from the principal facade. Driveways shall extend at least 18 feet into the property from the Master Street Plan right-of-way to allow parking to occur without encroaching into the right-of-way.
 - (ii) Parking areas should be accessed by mid-block alleys whenever possible. Developments should minimize multiple driveways and should utilize a shared access to reduce the number of vehicle conflicts at the street.
 - (iii) On-street parallel parking may be provided on at least one (1) side of the street in front of all multi-family buildings where feasible. Each on-street parking space provided along the project frontage shall count toward the total required spaces for the development.
- (3) *[Reserved.]*
- (4) *Pedestrian Circulation.*
 - (a) Ground floor dwelling units adjacent to a public street shall have a primary pedestrian entry that is visible from the street. This entry shall connect unobstructed to the public sidewalk where sidewalk exists in a manner to allow occupants to access from the interior of the structure to the city sidewalk. The connection shall match the sidewalk in material type and shall be at least 3 feet in width unless otherwise approved by the Zoning and Development Administrator in writing. The

entry may be gated and shared but must occur at a spacing of no fewer than one (1) entrance for every two (2) street level dwellings. The pedestrian connection to the street may run from the door along the façade of the building parallel to the street for a maximum of 12 feet from the door before connecting directly to the public sidewalk.

- (b) Urban residential projects shall incorporate pedestrian connections to adjacent residential and commercial properties where sidewalks exist unless this requirement is otherwise waived by the Planning Commission.
- (5) *Screening Requirements if Visible from the Highway/Street Right-of-Way.*
 - (a) *Mechanical and Utility Equipment.* All mechanical and utility equipment located on the wall and/or on the ground shall be screened, except for air conditioning window units. All roof mounted utilities and mechanical equipment shall be screened by incorporating screening into the structure utilizing materials compatible with the supporting building. Mechanical and utility equipment over 30 inches in height shall meet building setbacks, unless located in a utility easement.
 - (b) *Recycling and Trash Containers.* Adequate space and screening shall be provided for the placement of recycling and trash containers in urban residential developments.
 - (i) Urban residential developments are required to provide adequate space to provide both recycling and trash services for residents. The Recycling and Trash Collection Division Director may exercise discretion in approving the dimensional size of the required enclosure or dedicated space for servicing recycling and trash containers. Large multi-family urban residential developments typically will be required to provide adequate space for the placement of two (2) front-end load dumpsters that are easily accessible with a minimum enclosure dimension of 24 feet wide and 12 feet deep.
 - (ii) Recycling and trash containers shall be screened by enclosures with materials that are complementary to the principal structure, with access to the refuse containers not visible from the public right-of-way.
 - (c) *Screening.* Screening shall mean a view obscuring fence, berm, vegetation, architectural treatment consistent with the residential architecture, or a combination of the four of sufficient height to prevent the view of the screened items from the public right-of-way. Vegetation shall be planted at a density sufficient to become view obscuring within two years from the date of planting.
- (6) *Fencing.* The following types, height, and location of fences shall be prohibited:
 - (a) *Razor and/or Barbed Wire.* Razor and/or barbed wire fences are prohibited, unless and except barbed wire fences are used for agricultural purposes.
 - (b) *Chain Link.* Chain link fence is prohibited if closer to the street than the front of the building.
 - (c) *Height of Fences in Front of Buildings.* Fences in the front yard area shall have a maximum height of 42 inches subject to visibility requirements in Chapter 164.09 and 164.17.
- (D) *Architectural Design Standards.*
 - (1) *Intent.* The intent of these building design standards is:
 - (a) To ensure that urban residential buildings add to the character and quality of the community, offer a sense of security, and make a positive contribution to the life of the street.
 - (b) To maximize the quality, value and longevity of urban residential neighborhoods.
 - (c) To make housing appealing and comfortable for its inhabitants.

(2) *Construction and Appearance Design Standards for Urban Residential Development.*(a) *Building Form and Design.*

- (i) In order to provide a variety in form and design, one (1) building type may not be utilized more than three (3) times in a development. Each building type shall be differentiated by variations in materials, colors and roof forms.
- (ii) Ancillary structures such as carports, garages, recreational buildings and storage structures shall be designed as an integral part of the project architecture.
- (iii) The following architectural elements shall be required of all principal façades that are greater than 48 feet wide along the street frontage:
 - (a) Variations in materials;
 - (b) Insets or other relief in the wall plane;
 - (c) Incorporation of two or more of the following:
 - (1) Balconies;
 - (2) Bays or bay windows;
 - (3) Porches;
 - (4) Dormers;
 - (5) Porticoes;
 - (6) Turrets; or
 - (7) Other architectural feature approved by the Zoning Development Administrator that meets the intent of the code.
- (iv) One (1) or more of the following architectural elements shall be required of all principal façades that are 48 feet wide or less along the street frontage:
 - (a) Balconies;
 - (b) Bays or bay windows;
 - (c) Porches;
 - (d) Dormers;
 - (e) Porticos;
 - (f) Turrets; or
 - (g) Other architectural feature approved by the ~~Development Review Manager~~ Zoning and Development Administrator that meets the intent of the Code.

- (E) *Planning Commission Approval.* An applicant may request approval from the Planning Commission of a variance from the maximum requirements where unique circumstances exist and the effect will not adversely impact adjoining or neighboring property owners. The applicant shall provide notification to adjacent property owners prior to the date of the meeting.

(Ord. No. 5118, 3-18-08; Ord. No. 5262, 8-4-09; Ord. No. 5679, 4-15-14; Ord. No. 6170 , §1, 4-2-19; Ord. No. 6357 , §§1, 2, 9-15-20; Ord. No. 6508 , §1, 11-16-21; Ord. No. 6658 , §10, 5-2-23)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
 - (2) *Large Site Improvement Plan.*
 - (3) *Small Site Improvement Plan.*
 - (4) *Preliminary Plat.*
 - (5) *Final Plat.*
 - (6) *Concurrent Plat.*
 - (7) *Planned Zoning Districts.*
 - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process.
 - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
 - (10) *Grading Permit.* A tree preservation plan or an abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects that are not required to go through the development process.
 - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than ~~6,000~~ 1,200 square feet of impervious area. An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision, ~~or~~ large scale development, or site improvement plan process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
 - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
 - (a) Persons seeking to construct ~~6,000~~ 1,200-square feet or less of impervious area are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply.
 - (b) Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan.
- (B) *Tree Preservation Criteria.* The Urban Forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:
- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
 - (2) Whether the design incorporates the required tree preservation priorities.

- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether proposed roads and proposed utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the Unified Development Code, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note**—The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

- (C) *Canopy Area*. In all proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the applicant has been approved for on-site mitigation or off-site alternatives as set forth in §167.04(I) and (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. An applicant shall not be required to plant trees in order to reach the percent minimum canopy requirement on land where less than the minimum exists prior to development.

Table 1 Minimum Canopy Requirements	
ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential — Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential — One-Half Unit per Acre	25%
RSF-1, Single-family Residential — One Unit per Acre	25%
RSF-2, Single-family Residential — Two Units per Acre	20%
RSF-4, Single-family Residential — Four Units per Acre	25%
RSF-7, Single-family Residential — Seven Units per Acre	20%

RSF-8, Single-family Residential — Eight Units per Acre	20%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
RMF-6, Multi-family Residential — Six Units per Acre	20%
RMF-12, Multi-family Residential — Twelve Units per Acre	20%
RMF-18, Multi-family Residential — Eighteen Units per Acre	20%
RMF-24, Multi-family Residential — Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential — Forty Units per Acre	20%
NS-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior Tree Removal.*

- (1) If trees have been removed below the required percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 10% of the total area of the property for which the applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the base density for high priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree Preservation Priorities.*

- (1) *Percent Minimum Canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

- (2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
- (3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
- (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
- (a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
- (b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or an abbreviated tree preservation plan as set forth in §167.04(H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (G) *Initial Review.*
- (1) *Meeting with the Urban Forester.* It is strongly recommended that prospective applicants meet with the Urban Forester for an initial review of the proposed tree preservation plan for the site prior to submitting a proposed development to the city. During the initial review, the Urban Forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs and longer approval times due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the Urban Forester.
- (2) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email becomes part of the permanent file for the project.
- (H) *Submittal of Plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04(B) and (C).
- (1) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of the following features as they exist on the site:
- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,

- (j) Any other factors that may impact the design of the site.
- (2) *Additional Tree Preservation Plan Content.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between ~~6,001~~ 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, Subdivision Committee and or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Urban Forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis Report.* The applicant shall submit an analysis report when minimum percent canopy is not met. The report shall detail the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and Utility Plans.* All subsequent grading and utility plans shall depict Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (i) *Request for On-Site Mitigation.*
- (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
- (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:
- (a) The number of trees requested for removal;

- (b) The percentage below the percent minimum canopy requirement they represent; and
- (c) The species and number of trees to be planted based on the forestation requirements below.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:
 - (a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.
 - (b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.
- (5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
- (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Urban Forester.
- (7) *Placement of Trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.
- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
 - (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
 - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
 - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the city an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
 - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the letter of credit.

- (iii) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary moneys from the landscape establishment guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
- (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
 - (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
 - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
 - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
 - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
 - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
 - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
 - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
 - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
 - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

- (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(J) *Request for Off-Site Alternatives.*

- (1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
- (2) *Off-Site Preservation.* The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.
- (3) *Off-Site Forestation.*
 - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
 - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
 - (a) Developments proposed as building permits under Level 2 as outlined in §166.02(E)(2) are eligible for contribution to the tree escrow account as an option.
 - ~~(ba)~~ Residential developments which cannot achieve the base density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The city shall use the money paid into the Tree Escrow Account to plant trees within the development along rights-of-way, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the development is built out or as approved by the Urban Forester.
 - ~~(cb)~~ Money contributed in lieu of on-site mitigation or off-site forestation shall be paid prior to issuance of a building permit on all commercial, industrial, or multi-family residential buildings and prior to final plat acceptance for all residential and non-residential subdivisions.
 - ~~(de)~~ Money contributed under this section:
 - (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either city staff or contract labor;

- (ii) Shall not revert to the general fund for ongoing operations.
- (~~ed~~) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 1 mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
- (~~fe~~) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a 4% annual rate.
- (~~gf~~) Refunds shall be paid to ~~the applicant who made the original contribution~~ the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
- (~~hg~~) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the applicant shall be sufficient to satisfy the requirement of notice.
- (~~ih~~) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- (~~ii~~) At the time of the contribution to the Tree Escrow Account, the Urban Forester shall provide the applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this ordinance.
- (K) *Tree Preservation Plan Review Form.* The Urban Forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the Urban Forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The Urban Forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) Large scale developments, large ~~scale~~ site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large ~~scale~~ and small site improvements, commercial

final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824, §3, 11-17-15; Ord. No. 5945, §17, 1-17-17; Ord. No. 5986, §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442, §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446, §9(Exh. D), 6-15-21)



To: Mayor Jordan and the City Council

From: Urban Forestry Advisory Board
113 West Mountain Street
Fayetteville, AR 72701

Subject: Administrative Item (Amend UDC Chapters 166.02, Development Review Process, 167.04 Tree Preservation and Protection): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.02 and 167.04. The proposed code changes would modify development requirements associated with tree preservation requirements. (Originally heard with ADM-2024-0028)

Dear City Council Members and Mayor Jordan,

As a board with a primary focus on Arboricultural issues impacting the City of Fayetteville, we bring a wealth of expertise to our advisory role. Over the past two years, we have thoroughly reviewed the proposed code changes and believe that making projects with 1,201 square feet of new impervious area subject to abbreviated tree preservation plans is a crucial step. If approved, we are confident that this change will enhance our urban landscape and promote environmental stewardship.

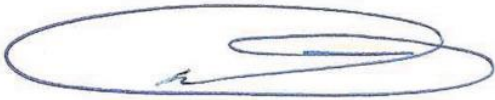
One of the biggest challenges of urban forests is the constant threat of tree removal for development. We understand that development is needed, but also have an acute understanding of the importance of trees. We also know that if developers are considerate of the environment, they can balance preservation, development, and profitability. If we continue to allow the status quo, we will lose canopy and the ecosystem benefits from trees removed during development activities. If we lose canopy from the development of single-family homes, duplexes, and triplexes, we are not supporting a livable City and will look back upon our decisions with regret.

Fayetteville's natural environment is a key attraction for many who are moving to the City. If we continue to allow a large segment of development to occur without tree preservation review, we risk undermining our long-term economic prosperity. We cannot continue to treat trees as disposable inanimate objects; if we do, our future will be a desolate, unlivable environment. Trees need to win on occasion, and this would be a win for trees.

We, the Urban Forestry Advisory Board, officially advise the City Council and the Mayor to support this code change. We stand firmly in support of our urban trees and the people of Fayetteville. Our commitment to this cause is unwavering, and we will continue to advocate for the protection of

urban trees and to balance development and the preservation of the natural environment. This code change will assist in striking this balance and ensuring Fayetteville is poised for responsible growth into the future.

Respectfully,

A handwritten signature in blue ink, consisting of a large, loopy 'C' followed by a stylized 'B' and a trailing flourish.

Carlo Bertani - Chair Urban Forestry Advisory Board



MEETING OF AUGUST 13, 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-2024-0026: Rezoning (WEST OF 2910 N. OLD WIRE RD/LIVINGSTON SUBDIVISION, 254): Submitted by JORGENSEN AND ASSOCIATES for property located WEST OF 2910 N. OLD WIRE RD in WARD 3. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 1.87 acres. The request is to rezone the property to RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE.**

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 in east Fayetteville, roughly 700 feet west of the intersection of N Crossover Rd. and N Old Wire Rd. The overall property was rezoned to NC, Neighborhood Conservation and R-A, Residential Agricultural on April 18, 2023 (RZN-2023-0004). The current request only applies to a 1.87-acre portion adjacent to N. Old Wire Rd. A preliminary plat was approved by the Planning Commission on July 10, 2023 (PPL-2023-0003) and an associated grading permit was issued on January 18, 2024. Associated infrastructure is currently under construction.

Request: The request is to rezone 1.87 acres from NC, Neighborhood Conservation to RSF-18, Residential Single-Family, Eighteen Units per Acre.

Public Comment: During the initial rezoning request in 2023, staff received one comment in favor and thirteen (13) comments opposed to the request, citing traffic, environmental concerns, impacts on home values and neighborhood character, and insufficient existing infrastructure. Prior to the Planning Commission, staff received a general inquiry but no comments specifically in favor or opposed to the new request.

Land Use Compatibility: On the balance of considerations, staff finds the request to be compatible with the surrounding context. Neighboring properties are a variety of sizes, uses, and densities (though with large areas of RSF-4, Residential Single-Family, Four Units per Acre) and generally follow a cul-de-sac development pattern. When the overall property was rezoned in 2023, the applicant downzoned 5.75 acres from RSF-4 to R-A, Residential Agricultural to limit development potential in environmentally sensitive areas. This downzone was paired with higher density in the remainder of the site. Staff notes that further increasing development intensity further along N. Old Wire Rd. is likely to have minimal impact on surrounding low density

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Fayetteville, AR 72701

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neighborhoods given the large area of transitional NC, Neighborhood Conservation remaining.

The existing and proposed zoning districts both include an urban form build-to-zone of 0–25 feet. Rezoning from NC to RSF-18 will decrease the minimum lot size for single and two-family uses from 4,000 sf to variable widths based on uses (1,250 square feet for townhouses and 2,500 square feet for one- and two-family dwellings). The minimum lot width would also be reduced from 40 feet to 30 feet. Both districts include a three-story height limit. Since the subject property contains roughly 1.87 acres of NC, a maximum of eighteen (18) units are permitted under current entitlements where the proposed zoning would increase the density cap to thirty-three (33) units. That said, any future development would be subject to, and limited by, minimum parking requirements, tree preservation, drainage, and access management standards. While the area could benefit from a mixed-use district such as NS-L, Neighborhood Services Limited given the lack of commercial services in the area, staff notes that the narrow width of the rezoning request may not lend itself to commercial development and that additional residential density could support future commercial uses in the area.

Land Use Plan Analysis: Staff finds the proposal is consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from NC to RSF-18 serves to contribute towards City Plan 2040 Goals #1 – Appropriate Infill, Goal #2 – We will discourage suburban sprawl, Goal #4 – Growing a Livable Transportation Network, and Goal #6 – Create Opportunities for Attainable Housing. The site scores relatively low on the Infill Scoring Matrix (see below). The existing and proposed zoning districts have identical uses by right and similar conditional uses. The Future Land Use Map designates this portion of the site as a “Residential Neighborhood Area” – a designation which supports a wide variety of housing types of appropriate scale and context, including single-family, duplexes, rowhouses, multifamily and accessory dwelling units. The existing NC zoning would create a transition area between the denser development adjacent to N. Old Wire Rd. and larger lots further away from the corridor, and the creation of smaller lots could encourage smaller, more affordable residential units.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040’s Infill Matrix indicates a score range of **4-6** for this site. The following elements of the matrix contribute to the score:

1. Adequate Fire Response (Station #5, 2979 N Old Wire Rd.)
2. Near Sewer Main (8” sewer main, N Old Wire Rd.)
3. Near Water Main (6” water main, N Old Wire Rd.)
4. Near Public School (Butterfield Trail Elementary School)
5. Near City Park (Gulley Park)
6. Near Paved Trail (Niokaska Creek Trail)

DISCUSSION:

At the June 24, 2024 Planning Commission meeting, a vote of 7-1-0 forwarded the request to City Council with a recommendation of approval. Commissioner Werner motioned and Commissioner McGetrick seconded. The commissioners in favor of the request cited a modest increase in density and the fact that any revised plans will require additional staff review. Commissioner Garlock voted against the rezoning, citing the area’s low infill score and traffic concerns. Six members of the public stated opposition to the request during the meeting, citing concerns about increased impervious surface, current drainage problems in the area, increased traffic on a narrow road, impact to public schools, environmental impacts and inconsistencies with the number of proposed lots.

BUDGET/STAFF IMPACT:

NA

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Planning Commission Staff Report (#6), Pre And Post-Development Topography Exhibits (#7)

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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 #: 2024-297

RZN-2024-0026: Rezoning (WEST OF 2910 N. OLD WIRE RD/LIVINGSTON SUBDIVISION, 254): Submitted by JORGENSEN AND ASSOCIATES for property located WEST OF 2910 N. OLD WIRE RD in WARD 3. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 1.87 acres. The request is to rezone the property to RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE.

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-26 FOR APPROXIMATELY 1.87 ACRES LOCATED WEST OF 2910 NORTH OLD WIRE ROAD IN WARD 3 FROM NC, NEIGHBORHOOD CONSERVATION TO RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby changes the zone classification of the property shown on the map (Exhibit A) and the legal description (Exhibit B) both attached to the Planning Department's Agenda Memo from NC, Neighborhood Conservation to RSF-18, Residential Single Family, Eighteen Units Per Acre.

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

2024-297

Item ID

7/16/2024

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

Jonathan Curth

6/28/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0026: Rezoning (WEST OF 2910 N. OLD WIRE RD/LIVINGSTON SUBDIVISION, 254): Submitted by JORGENSEN AND ASSOCIATES for property located WEST OF 2910 N. OLD WIRE RD in WARD 3. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 1.87 acres. The request is to rezone the property to RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE.

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:

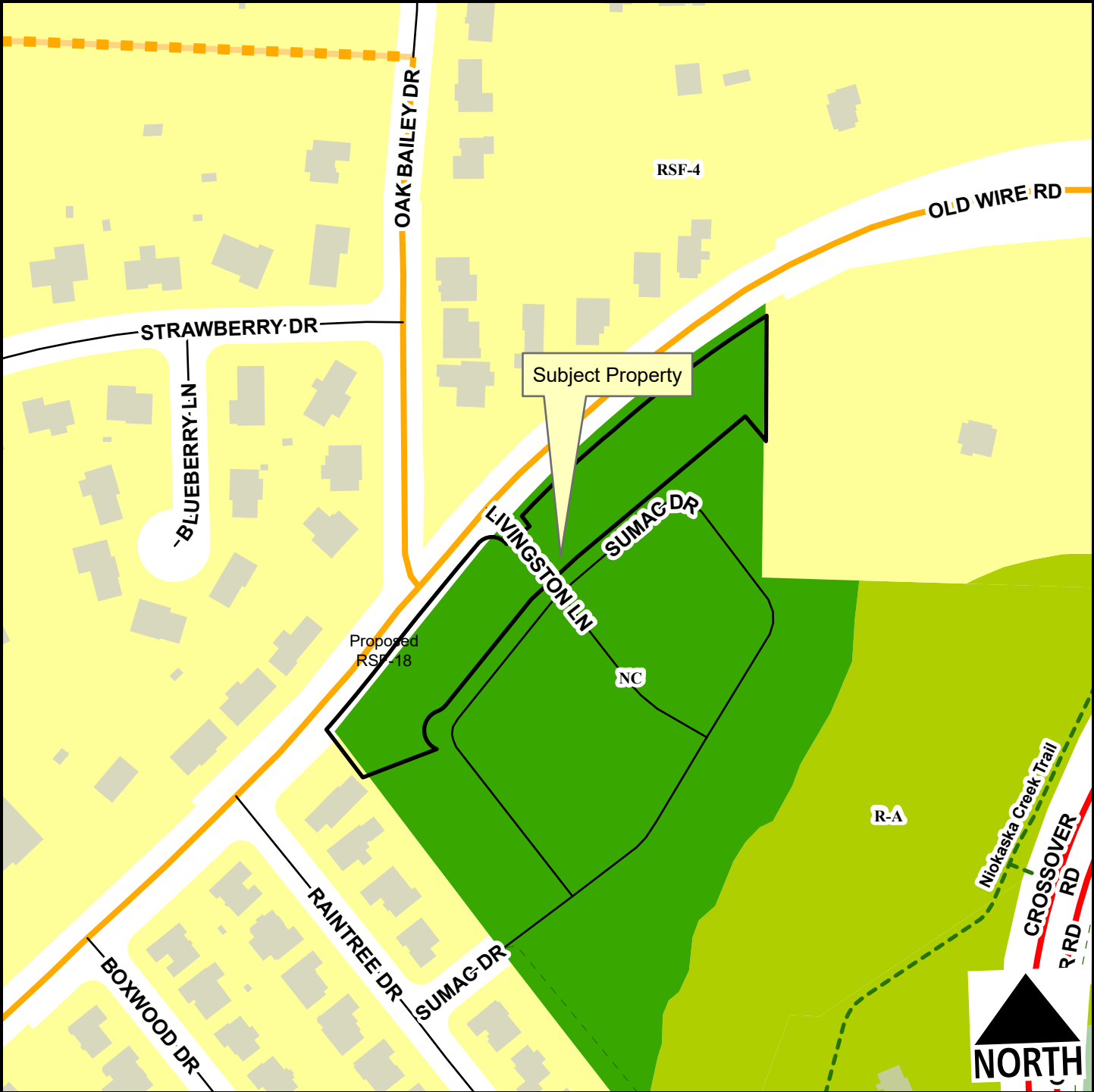
Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



Regional Link Neighborhood Link Residential Link Planned Neighborhood Link Trail (Proposed) Planning Area Fayetteville City Limits	Feet 075150300450600 1:2,400	<table> <tr> <th>Zone</th><th>Current</th><th>Proposed</th></tr> <tr> <td>NC</td><td>1.8</td><td>0.0</td></tr> <tr> <td>RSF-18</td><td>0.0</td><td>1.9</td></tr> <tr> <td>RSF-4</td><td>0.0</td><td>0.0</td></tr> <tr> <td colspan="2">Total</td><td>1.9 ac</td></tr> </table>	Zone	Current	Proposed	NC	1.8	0.0	RSF-18	0.0	1.9	RSF-4	0.0	0.0	Total		1.9 ac
Zone	Current	Proposed															
NC	1.8	0.0															
RSF-18	0.0	1.9															
RSF-4	0.0	0.0															
Total		1.9 ac															

RZN-2024-0026
EXHIBIT 'B'

LEGAL DESCRIPTION:

A part of the SE1/4 of the NE1/4 of Section 36, T17N, R30W in Washington County, Arkansas, and being described as follows: Commencing at the NW Corner of the Fractional SW1/4 of the NW1/4 of Section 31, T17N, R29W, thence S02°14'17"W 97.12 feet, thence S02°15'04"W 62.17 feet to the POINT OF BEGINNING; thence S02°15'04"W 172.50 feet, thence N37°55'46"W 44.41 feet, thence S52°04'14"W 301.30 feet, thence S49°17'22"W 85.53 feet, thence S40°56'22"W 186.90 feet, thence along a curve to the right 14.76 feet, said curve having a radius of 28.00 feet and a chord bearing and distance of S56°02'37"W 14.59 feet, thence along a reverse curve to the left 66.77 feet, said curve having a radius of 28.00 feet and a chord bearing and distance of S02°49'43"W 52.04 feet, thence S71°02'29"W 108.84 feet, thence N35°17'41"W 82.63 feet, thence along a non tangent curve to the left 156.20 feet, said curve having a radius of 2,080.39 feet and a chord bearing and distance of N41°01'12"E 156.16 feet, thence along a non tangent curve to the right 174.08 feet, said curve having a radius of 4,898.91 feet and a chord bearing and distance of N41°20'57"E 174.07 feet, thence along a compound curve to the right 44.51 feet, said curve having a radius of 25.00 feet and a chord bearing and distance of S86°37'36"E 38.86 feet, thence N54°22'47"E 40.00 feet, thence N35°37'13"W 17.64 feet, thence along a non tangent curve to the right 173.24 feet, said curve having a radius of 1,303.48 feet and a chord bearing and distance of N48°53'03"E 173.11 feet, thence along a non tangent curve to the right 254.73 feet, said curve having a radius of 1,637.23 feet and a chord bearing and distance of N55°02'19"E 254.47 feet, thence along a non tangent curve to the right 8.01 feet, said curve having a radius of 498.67 feet and a chord bearing and distance of N59°27'12"E 8.01 feet to the POINT OF BEGINNING: Containing 1.87 acres more or less subject to easements and right of way of record.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: June 24, 2024 (UPDATED WITH MEETING RESULTS)

SUBJECT: **RZN-2024-0026: Rezoning (WEST OF 2910 N. OLD WIRE RD/LIVINGSTON SUBDIVISION, 254):** Submitted by JORGENSEN AND ASSOCIATES for property located WEST OF 2910 N. OLD WIRE RD. The property is zoned NC, NEIGHBORHOOD CONSERVATION and contains approximately 1.87 acres. The request is to rezone the property to RSF-18, RESIDENTIAL SINGLE FAMILY, EIGHTEEN UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN-2024-0026** to the City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2024-0026** to City Council with a recommendation of approval."

BACKGROUND:

The subject property is located in east Fayetteville, roughly 700 feet west of the intersection of N Crossover Rd. and N Old Wire Rd. While the overall property was rezoned from RSF-4, Residential Single-Family, Four Units per Acre to a split zoning of NC, Neighborhood Conservation on the western half and R-A, Residential Agricultural over the eastern half on April 18, 2023 (RZN-2023-0004), the current request only applies to a 1.87-acre portion adjacent to N. Old Wire Rd. A preliminary plat was approved by Planning Commission on July 10, 2023 (PPL-2023-0003) and an associated grading permit was issued on January 18, 2024. The infrastructure for this project, including water, sewer, and interior roads is currently under construction. 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 (Under Construction)	NC, Neighborhood Conservation
East	Single-Family Residential (Under Construction)	NC, Neighborhood Conservation
West	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre

Request: The request is to rezone 1.87 acres from NC, Neighborhood Conservation to RSF-18, Residential Single-Family, Eighteen Units per Acre.

Public Comment: Two members of the public offered comment in opposition of the item during the initial rezoning request in 2023, citing potential increase in traffic, environmental concerns, negative impact to home values and neighborhood character, and lacking existing infrastructure including schools. Since then, staff has received a general inquiry concerning the updated request but no comments specifically in favor or opposed.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

Streets: The subject area has frontage along N. Old Wire Rd., a partially improved neighborhood link with asphalt paving and open. Any street or drainage improvements required in these areas would be determined at the time of the development proposal.

Water: Public water is available. An existing 8-inch water main is present on the southeast side of the subject property.

Sewer: Sanitary sewer is available. An existing 12-inch sewer main is present on the subject property and an existing 6-inch sewer main is present on the north side of N. Old Wire Rd.

Fire: Station 5, located at 2979 N. Crossover Rd., protects this site. The property is located approximately 0.3 miles from the fire station with an anticipated drive time of approximately 1 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 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 lies within the Hillside-Hilltop Overlay District. The subject area does not include FEMA floodplain, streamside protection, or hydric soils.

Tree Preservation:

The proposed zoning district of RSF-18, Residential Single-Family, Eighteen Units per Acre requires **20% minimum canopy preservation**. The current zoning district of NC, Neighborhood Conservation 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 a **Residential Neighborhood** and **Natural Area**.

Residential Neighborhood Areas are primarily residential in nature and support a wide variety of housing types of appropriate scale and context: single-family, duplexes, rowhouses, multifamily and accessory dwelling units. 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, such as retail and offices, on corners and along connecting corridors. This designation recognizes existing conventional subdivision developments which may have large blocks with conventional setbacks and development patterns that respond to features

of the natural environment. Building setbacks may vary depending on the context of the existing neighborhood.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a ranged score of 4-6 for this site, with a weighted score of 6. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #5, 2979 N Old Wire Rd.)
- Near Sewer Main (8" sewer main, N Old Wire Rd.)
- Near Water Main (6" water main, N Old Wire Rd.)
- Near Public School (Butterfield Trail Elementary School)
- Near City Park (Gulley Park)
- Near Paved Trail (Niokaska Creek 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:*** On the balance of considerations, staff finds the request to be compatible with the surrounding context. Residential uses and densities located near the subject property vary substantially, though with large areas of RSF-4, Residential Single-Family, Four Units per Acre. Neighboring properties are of a variety of sizes but generally follow a cul-de-sac development pattern. When the overall property was rezoned in 2023, the applicant downzoned 5.75 acres from RSF-4 to R-A, Residential Agricultural to limit development potential in an area with both FEMA floodplain and streamside protection zones. This downzoning was paired with higher density in the remainder of the site, allowing the site to increase density while minimizing negative impact within sensitive ecological areas. Staff notes that further increasing development intensity further along N. Old Wire Rd. is likely to have minimal impact on surrounding low density neighborhoods a sizeable portion of the proposed rezoning area will still have NC, Neighborhood Conservation as a transitional area.

The existing and proposed zoning districts both include an urban form build-to-zone of 0-25 feet. When compared to NC, rezoning to RSF-18 will decrease the minimum lot size for single and two-family uses from 4,000 sf to variable widths based on uses (1,250 square feet for townhouses and 2,500 square feet for one- and two-family dwellings). Minimum lot widths would also be reduced from 40 feet to 30 feet. Both NC and RSF-18 include a three-story height limit. Since the subject property contains roughly 1.87 acres of NC, a maximum of eighteen (18) units are permitted under current entitlements, where the proposed rezoning to RSF-18 would increase the density cap to thirty-three (33) units. That said, any future development would be subject to, and limited by, minimum parking requirements, tree preservation, drainage, and access management standards. While the area could benefit from a mixed-use district such as NS-L, Neighborhood Services Limited given the lack of commercial services in the area, staff notes that the narrow width of the rezoning request may not lend itself to commercial development

and that additional residential density could support future commercial uses in the area.

Land Use Plan Analysis: Staff finds the proposal is consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from NC to RSF-18 serves to contribute towards City Plan 2040 Goals #1 – Appropriate Infill, Goal #2 – We will discourage suburban sprawl, Goal #4 – Growing a Livable Transportation Network, and Goal #6 – Create Opportunities for Attainable Housing. The site scores relatively low on the Infill Scoring Matrix due to water/sewer access, public parks and trails, and the proximity of fire station #5 and Butterfield Trail Elementary School. The existing and proposed zoning districts have identical uses by right and similar conditional uses. The Future Land Use Map designates this portion of the site as “Residential Neighborhood Area” – a designation which supports support a wide variety of housing types of appropriate scale and context including single-family, duplexes, rowhouses, multifamily and accessory dwelling units. The existing NC zoning would create a transition area between the denser development adjacent to N. Old Wire Rd. and larger lots further away from the corridor, and the creation of smaller lots could encourage smaller residential units which could be more affordable.

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

Finding: Staff finds that rezoning to RSF-18 is justified. Because rezoning will better support infill redevelopment of the property, staff finds the proposed zoning to be consistent with the City’s future land use goals and therefore needed at this time.

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

Finding: Rezoning to RSF-18 has an associated potential to increase traffic at this location. RSF-18 permits development at 18 units per acre where it is currently limited to 10 units per acre. Staff finds potential to increase the number of residential units above what is currently allowed by right subject to constraints such as steep slopes, tree preservation requirements, and other design requirements. Staff finds the increase in density is unlikely to result in increased traffic danger or congestion, particularly given the small size and narrow width of the requested rezoning area. The subject property has access to N. Old Wire Rd., an improved Neighborhood Link and future development would be required to meet the City’s applicable access management and parking standards.

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

Finding: Rezoning the property to RSF-18 may increase the load on public services, but the impact is not expected to be detrimental. The size of the property and access to existing water and sewer infrastructure means future development

will likely avoid the need for costly extensions to services. 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 approval of RZN-2024-0026.

PLANNING COMMISSION ACTION: Required <u>YES</u>			
Date: <u>June 24, 2024</u>	☐ Tabled	☒ Forwarded	☐ Denied
Motion: WERNER	FORWARDED TO CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL		
Second: MCGETRICK			
Vote: 7-1-0 (GARLOCK OPPOSED, MADDEN ABSENT)			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.29 NC, Neighborhood Conservation
 - §161.10 RSF-18, Residential Single-Family, Eighteen (18) Units per Acre
- Applicant Request Letter
- Site Exhibit
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

161.29 Neighborhood Conservation

(A) *Purpose.* The Neighborhood Conservation zone has the least activity and a lower density than the other zones. Although Neighborhood Conservation is the most purely residential zone, it can have some mix of uses, such as civic buildings. Neighborhood Conservation serves to promote and protect neighborhood character. For the purposes of Chapter 96: Noise Control, the Neighborhood Conservation district is a residential zone.

(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 9	Two (2) family dwellings
Unit 10	Three (3) and four (4) family dwellings
Unit 12a	Limited business*
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communication facilities
Unit 44	Cluster Housing Development

(C) *Density.* Ten (10) Units Per Acre.

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

All dwelling types	40 feet
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(2) *Lot Area Minimum.* 4,000 square feet

(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	5 feet
Rear	5 feet

Rear, from center line of an alley	12 feet
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(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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(Ord. No. 5128, 4-15-08; 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, 7—9, 1-17-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6211 , §1, 8-6-19; Ord. No. 6427 , §§1(Exh. C), 2, 4-20-21)

Ord. No. 6427 , § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

161.10 District RSF-18, Residential Single-Family - Eighteen (18) Units Per Acre

(A) *Purpose.* The RSF-18 Single-family Residential District is designed to promote and encourage the efficient development of single-family detached residences in a variety of densities.

(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.*

Units per acre	Eighteen (18) or less
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(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Single-family	30 feet
Two (2) family	30 feet

(2) *Lot Area Minimum.*

Townhouses: individual lot	1,250 square feet
Single-family	2,500 square feet
Two-family	2,000 square feet

(E) *Setback Requirements.*

Front	Side	Side-Zero Lot Line*	Rear
A build-to zone that is located between the front property line and a line 25	5 feet on both sides	A setback of less than five feet (zero lot line) is permitted on one interior side, provided a maintenance agreement is	5 feet

ft. from the front property line.		filed**. The remaining side setback(s) shall be 10 feet.	
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* A zero lot line is an alternative to the 5 foot building setback. Applicants should consult the International Building Code when locating a structure in close proximity to property lines and/or adjacent structures.

** At least 5 feet of maintenance area shall be provided along a structure that is within 5 feet of a property line. This may be provided through a perpetual maintenance easement on the adjacent property, or through a combination of a maintenance easement and private property. Walls, fences and customary yard accessories are permitted in the maintenance area.

(F) *Building Height Regulations.*

Building Height Maximum	3 stories
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(G) *Building Area.* The area occupied by all buildings shall not exceed 60% 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 for two-family dwellings.

(Ord. No. 5800, §2(Exh. B), 10-6-15; Ord. No. 5824, §2, 11-17-15; 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. 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.



June 4, 2024

City of Fayetteville
Development Services
113 West Mountain Street
Fayetteville, AR 72701

Re: Rezoning at 2910 N Old Wire Road (Livingston Subdivision)

Dear City Staff;

On Behalf of the Owner and their representatives, we are submitting a rezoning request for property located along 2910 N Old Wire, Fayetteville, AR 72703.

- A. The current owner of this site is as follows: J&M Capital Ventures (Parcel Numbers 765-16047-000, 765-13287-000. 765-16043-000.
- B. Currently this property is zoned NC
- C. This property is surrounded by RSF-4 on the north and west, a portion of P-1 to the south and north, and section of R-O to the east.
- D. Existing adequate water and sewer are already at this site.
- E. We feel the requested rezoning is in line with the goals of the City Plan 2040 where the future land use calls for a portion of Residential Neighborhood and Natural.

Statement of Compatibility:

This request to rezone a portion of the NC to RSF-18 along Old Wire Road, will create a transitional zoning boundary that will allow for a more diverse type of housing within this neighborhood and help in addressing some of the housing issues within the City. Within reasonable proximity, our firm recently requested a rezoning of a portion of the property south of Butterfield Elementary (known as Stage Station) to RSF-18. The City Council passed this request and thus set a precedence for similar development patterns that serve to promote and protect the neighborhood character. This being said, we believe that this rezoning is compatible with the current surrounding uses.



LEGEND

PROPERTY LINE

PROJECT DETAILS

PROJECT TITLE:
 LIVINGSTON
 REZONING

PROJECT LOCATION:
 FAYETTEVILLE, AR

REVISIONS

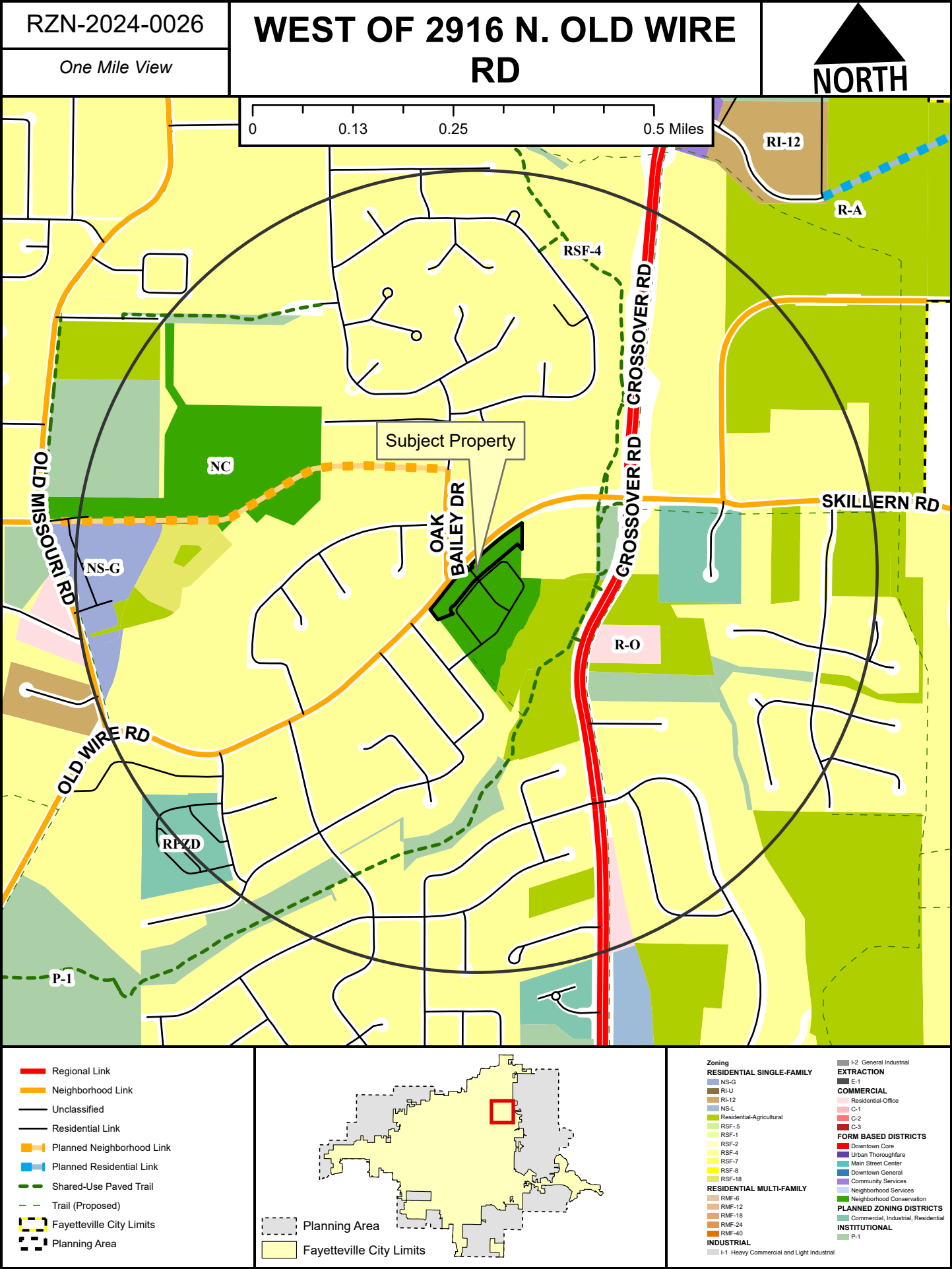
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 PROJECT #2022-148
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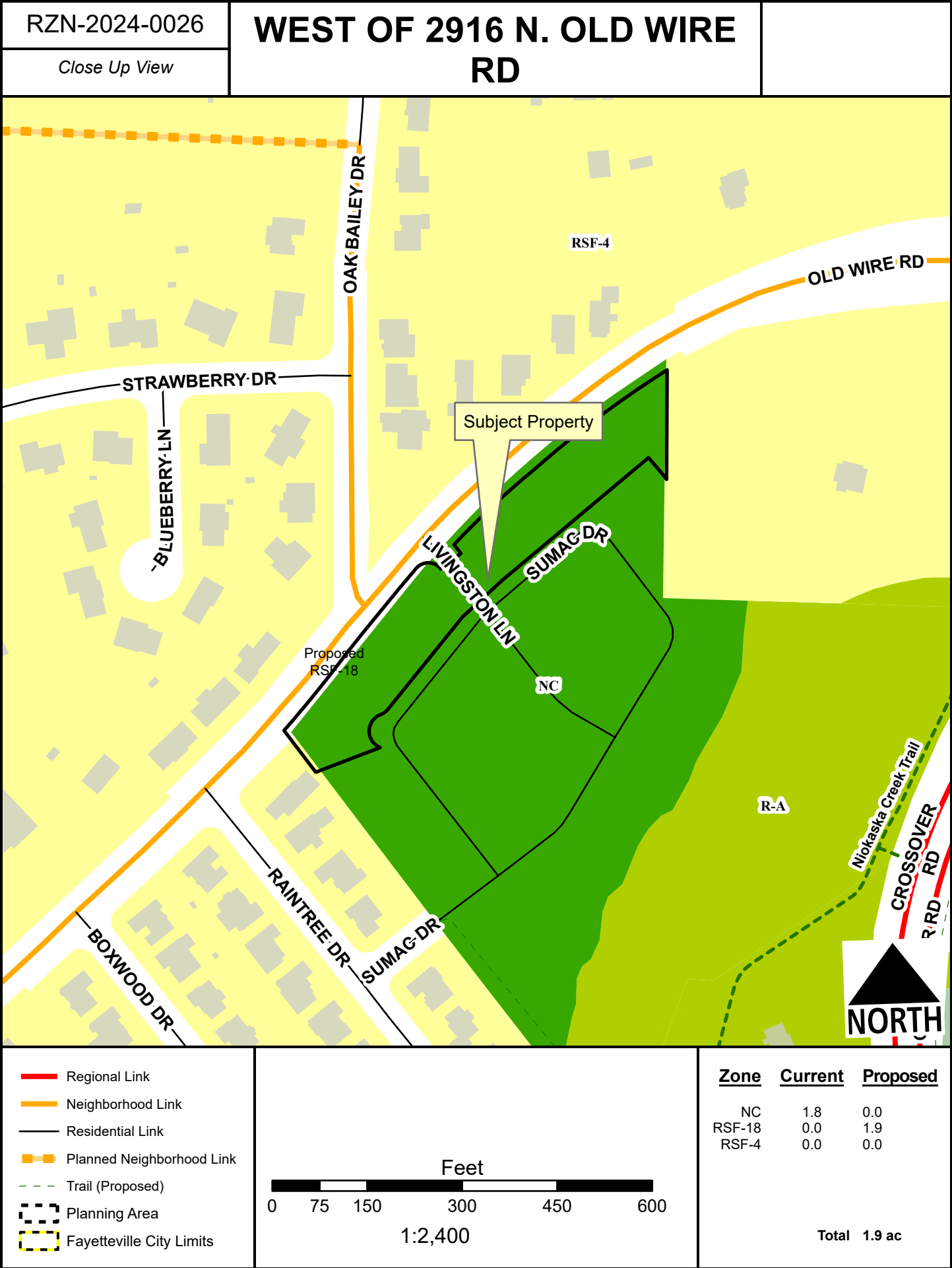
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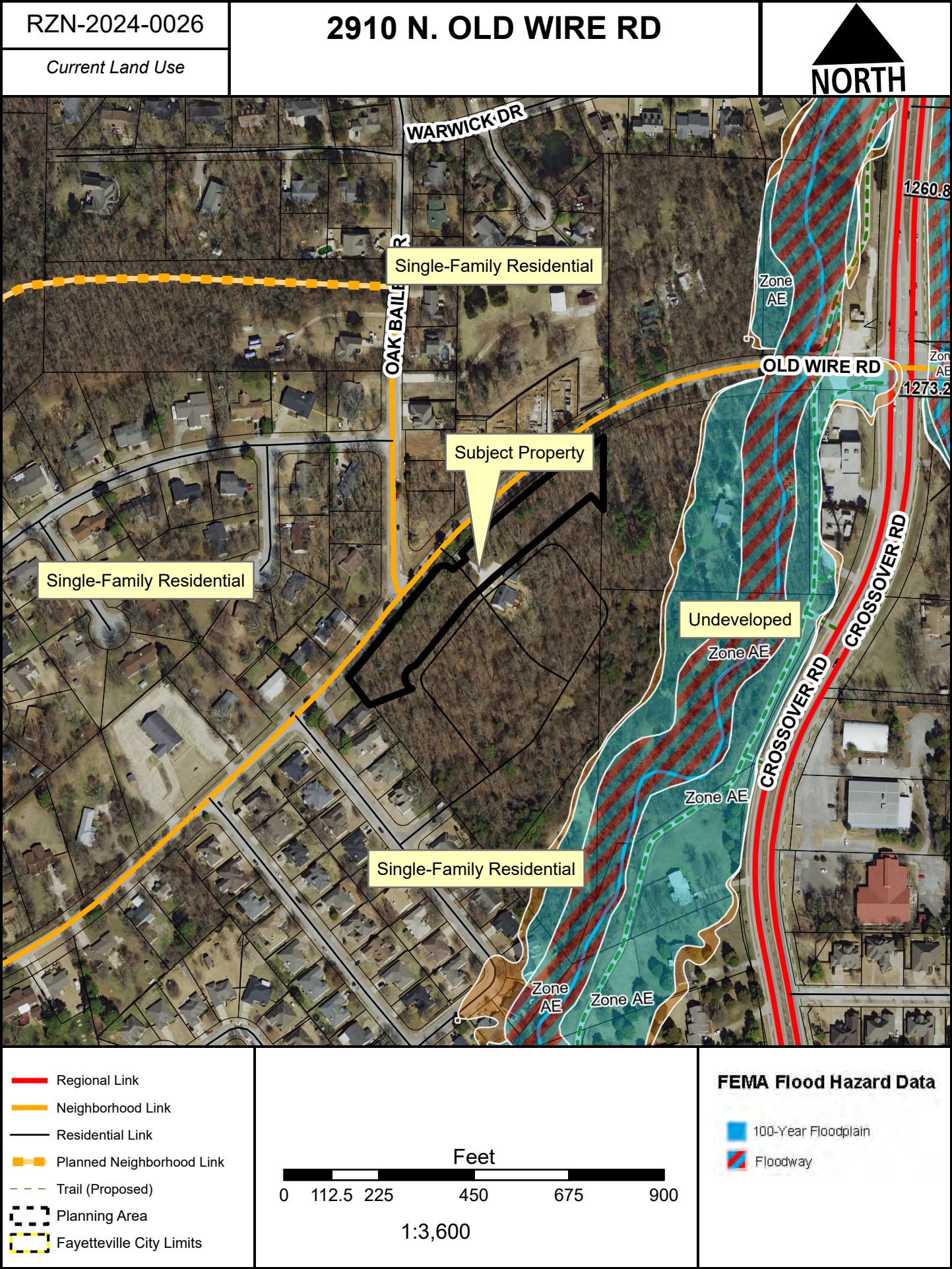
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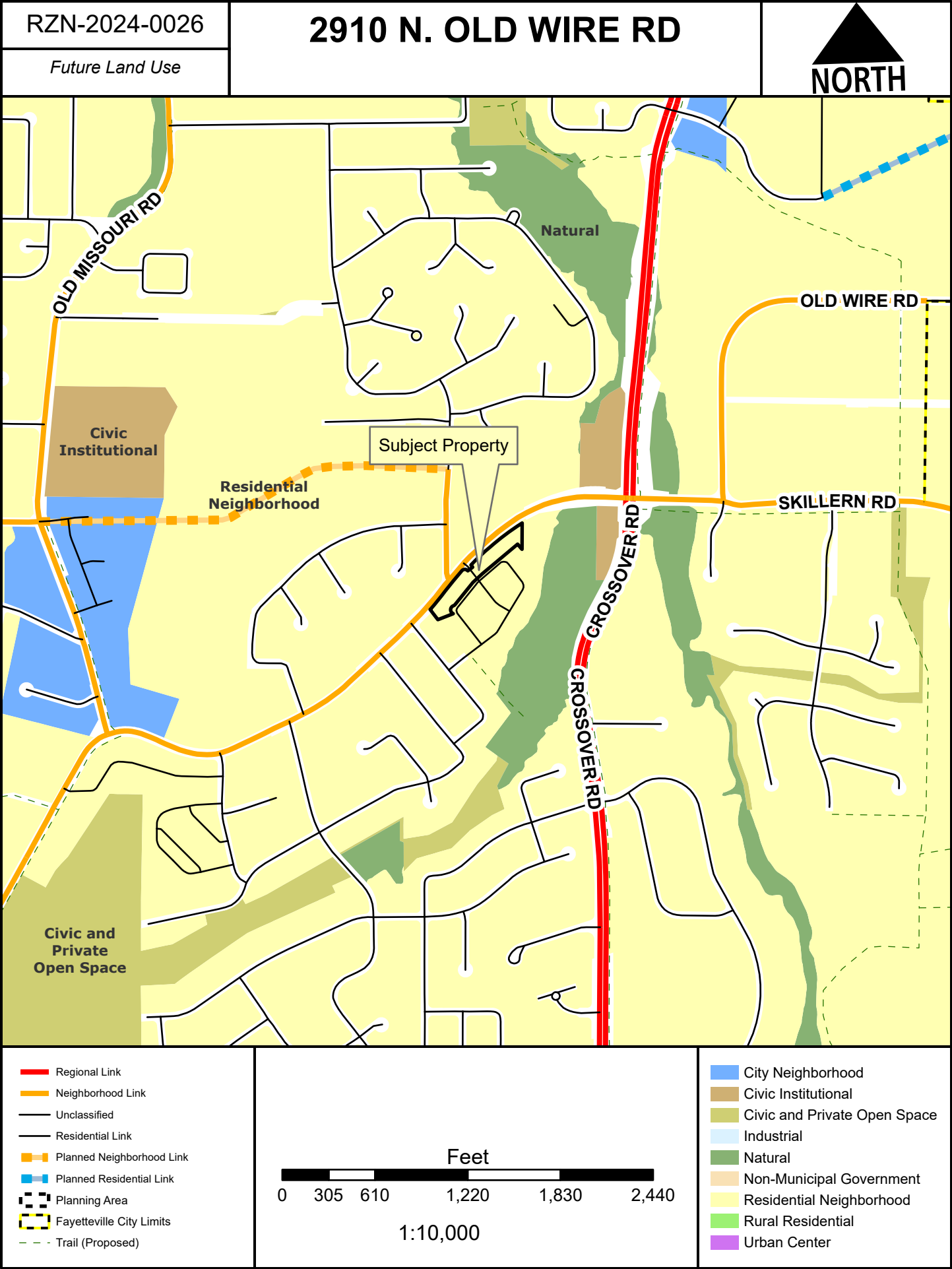
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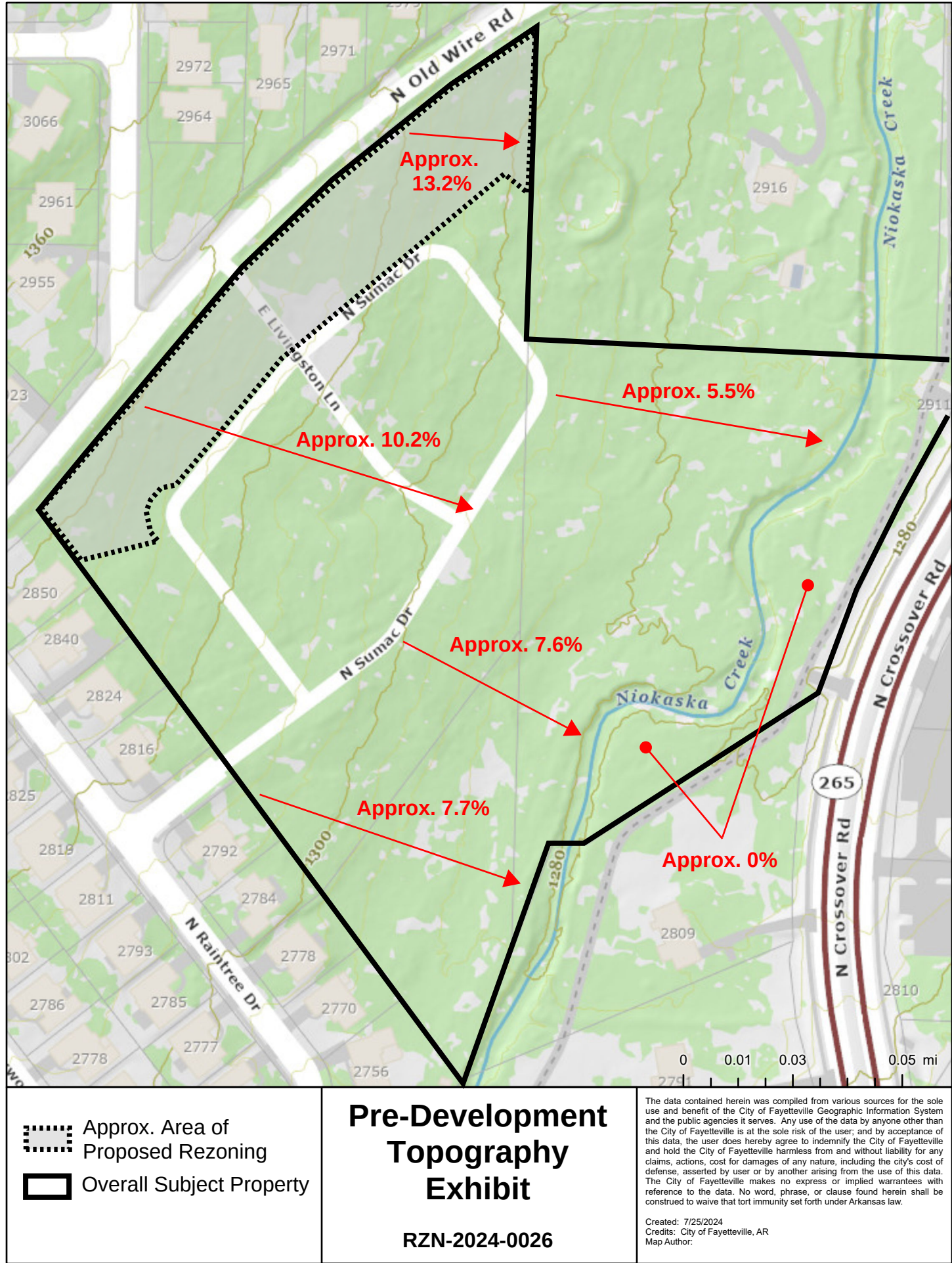
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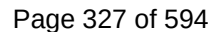














MEETING OF AUGUST 13, 2024

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-2024-0028: Rezoning (EAST OF HARMON FIELD ON S. DUNCAN AVE./MODUS STUDIO, 522): Submitted by MODUS STUDIO for property located EAST OF HARMON FIELD ON S. DUNCAN AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 3.7 acres. The request is to rezone the property to MSC, MAIN STREET CENTER.**

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 area is in central Fayetteville directly east of Harmon Field and 600 feet northeast of the Fayetteville High School building. The subject area includes ten parcels along S. Duncan Ave. containing a total of 3.7 acres split between two areas (1 acre and 2.7 acres) which have been developed with a range of uses from single-, two-, three- and four-family dwellings and larger apartment buildings. The existing structures were built between 1926 -1986. Additional details on each parcel is included in a staff attachment. The subject area is currently zoned RMF-40, Residential Multifamily, 40 Units per Acre and 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, subject to a bill of assurance.

Public Comment: One member of the public requested additional information regarding the project and associated public hearing. An additional commenter sent multiple emails discussing both this rezoning and the rezoning across the street (RZN-2024-0018) and their potential impacts to the existing neighborhood fabric and residents, potential removal of affordable housing, environmental concerns, and concern about the developer trying to acquire properties for this rezoning. Further comment was made at the Planning Commission hearing, which is summarized below.

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 either large apartment structures or the Fayetteville High School campus, with mixed-density residential located to the east. The parcels within the subject area are currently developed with primarily single-family dwellings. Staff notes that since there is a gap in the proposed rezoning area occupied by an existing single-family dwelling, any development adjacent to this

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parcel would be subject to the additional setbacks of UDC 164.11(C) Home Protection Requirements.

Based on a review of addresses, there are a total of 42 residential dwelling units currently within the subject area. The existing RMF-40 district would permit a maximum of 148 dwelling units on the overall 3.7-acre subject area with a maximum building height of 5 stories, while the proposed MSC 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 38-98 years old with an average age of 71.5 years old. No completed permits aside from one electrical permit for the replacement of meter packs 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, and the subject area is not within a city historic district. An analysis of each parcel's current development is included in a staff exhibit.

The subject area is bound by RMF-40 to both the north and east, which permits multifamily developments and building heights of up to 5 stories. The Cardinal Apartments to the north and the Atmosphere Apartments to the east are both constructed at 5 stories including a parking garage. Harmon Field, a major sports venue for Fayetteville Schools, is located to the west and the school intends to construct a parking lot extension directly south of the subject area. Additionally, a full city block adjacent to the property to the east was successfully rezoned to MSC with a bill of assurances at the June 18 City Council agenda. This area will likely be developed with a large mixed-use student housing complex. Other structures in direct proximity to the proposed rezoning area include a three-family dwelling and single-family residence south of the intersection of W. Putnam St. and S. Duncan Ave. Staff finds that the greater height permitted by MSC is not likely to negatively affect the surroundings given abutting multi-story apartments and the large school complex, particularly as any development would be limited to 5 stories when within 0'-15' of the front property line.

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.

Staff finds the rezoning both positively and negatively contributes to 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 could 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 greater density 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. Further, cities in Arkansas are prohibited from enacting rent control

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ordinances per Arkansas Statute.

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 directly east of the Fayetteville High School campus and approximately 600 feet 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 very high, with a score between 11 and 12, 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.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040’s Infill Matrix indicates a ranging score of **11-12** for this site. The following elements of the matrix contribute to the score:

1. 4 Minute Fire Response (Station #1, 303 W. Center St.)
2. Near Sewer Main (6” Sewer Main, S. Duncan Ave.)
3. Near Water Main (12” Water Main, S. Duncan Ave.)
4. Near Grocery Store (Walmart Neighborhood Market)
5. Near Public School (Fayetteville High School)
6. Near U of A Campus
7. Near City Park (Lower Ramble)
8. Near Paved Trail (Oakridge Trail, Razorback Greenway)
9. Near ORT Bus Stop (Hillcrest Towers)
10. Near Razorback Transit Bus Stop (S. Hill Ave)
11. Appropriate Future Land Use
12. Sufficient Intersection Density

DISCUSSION:

At the June 24, 2024 Planning Commission meeting, a vote of 6-2-0 forwarded the request to City Council with a recommendation of approval. Commissioner Cabe motioned, and Commissioner Castin seconded. The commissioners in favor of the request cited the ability of the parcels to be redeveloped under existing zoning, potential for mixed-use development in a walkable area, the high infill score, and the proposed bill of assurances. Staff confirmed that consent of owner forms for the rezoning have been provided for all subject parcels and clarified the regulations of the home protection ordinance which would apply if development were adjacent to single-family homes in the MSC district. The applicant team explained that the request is primarily due to the allowance for mixing of uses and that MSC would allow flexibility in the design of the project given steepness of the site and existing tree canopy. Commissioner McGetrick noted that there is no guarantee these properties will remain as is given the willingness of the current owners to upzone their properties, that development is extremely likely here, and that any associated (re)development of the parcels would likely increase housing costs. Commissioners Payne and Cabe noted their agreement with Commissioner McGetrick. Commissioner Cabe further noted the Planning Commission’s limited ability to make policy

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determinations, stating this is the role of the City Council. Commissioner Garlock and Werner voted against the rezoning, citing the removal of existing affordable housing and concerns about potential building heights on a steep site.

Two members of the public stated opposition to the request during the meeting, citing eviction of current residents, removal of affordable housing for expensive apartments, narrow streets without striped crossings, increased traffic adjacent to Fayetteville High School, increased noise, and potential impacts to existing trees and habitat. One member of the public spoke in favor of the request, stating that housing in close proximity to the university and other services such as grocery stores and trails is critical for students and is especially important for international students who do not have vehicles.

BUDGET/STAFF IMPACT:

NA

ATTACHMENTS: SRF (#3), Exhibit A (#4), Exhibit B (#5), Exhibit C (#6), Planning Commission Staff Report (#7), Bill of Assurance (#8), Revised Bill of Assurance - 071624 (#9), City Attorney Memo (#10), Topography Exhibit (#11), UA Student Housing Memo (#12)

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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 #: 2024-306

RZN-2024-0028: Rezoning (EAST OF HARMON FIELD ON S. DUNCAN AVE./MODUS STUDIO, 522): Submitted by MODUS STUDIO for property located EAST OF HARMON FIELD ON S. DUNCAN AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 3.7 acres. The request is to rezone the property to MSC, MAIN STREET CENTER.

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-28 FOR APPROXIMATELY 3.7 ACRES LOCATED EAST OF HARMON FIELD ON SOUTH DUNCAN 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 the attached 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

2024-306

Item ID

7/16/2024

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

Jonathan Curth

6/28/2024

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2024-0028: Rezoning (EAST OF HARMON FIELD ON S. DUNCAN AVE./MODUS STUDIO, 522): Submitted by MODUS STUDIO for property located EAST OF HARMON FIELD ON S. DUNCAN AVE in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 3.7 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:

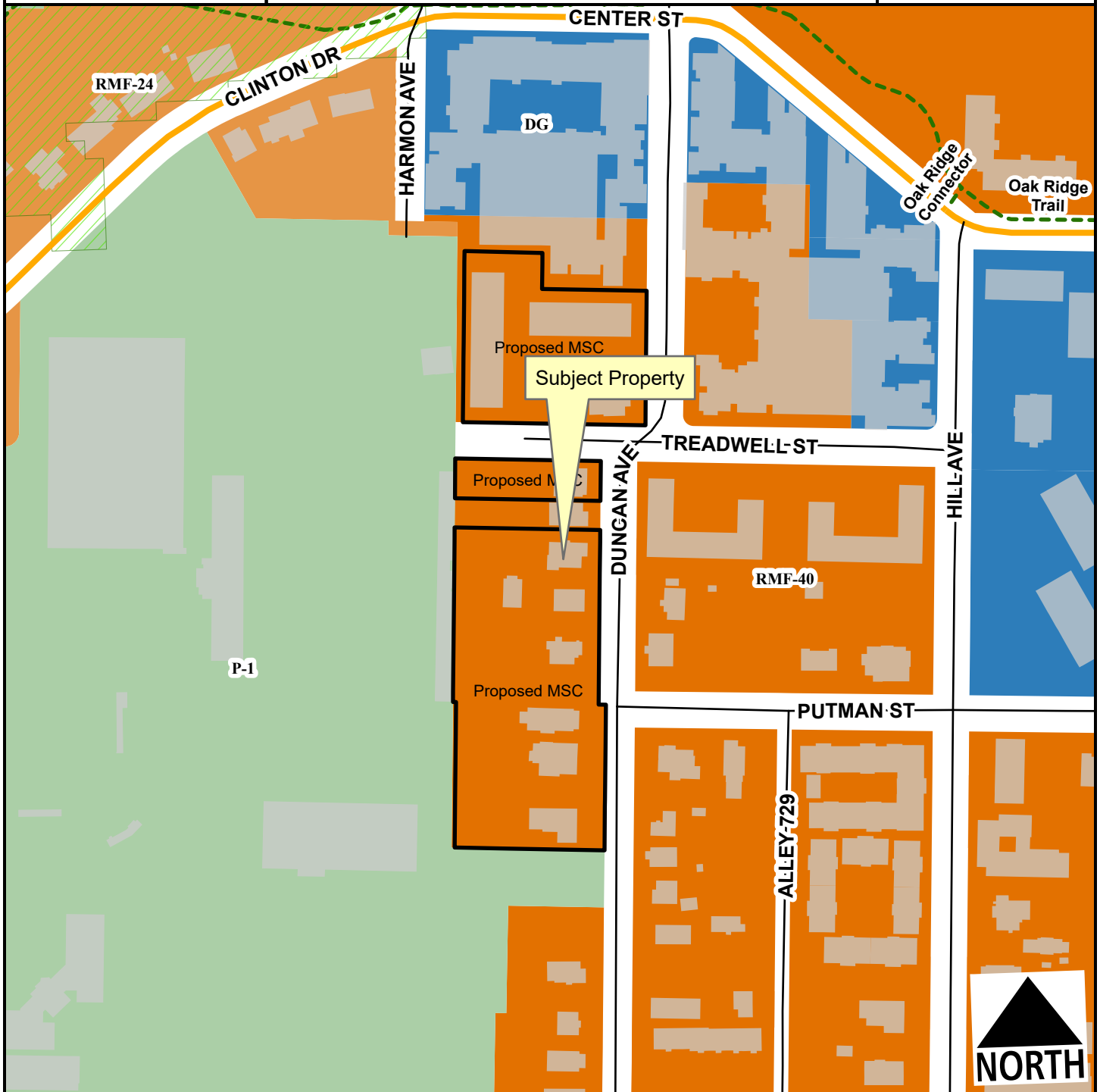
Comments:

RZN-2024-0028

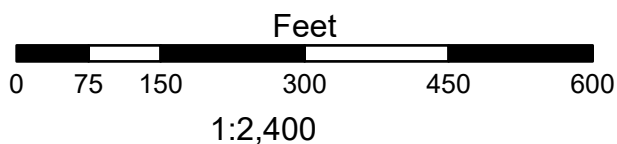
65 S. DUNCAN AVE

RZN-2024-0028
EXHIBIT 'A'

Close Up View



- Neighborhood Link
- Alley
- Residential Link
- Hillside-Hilltop Overlay District
- Planning Area
- Fayetteville City Limits



Zone	Current	Proposed
MSC	0.0	3.5
P-1	0.0	0.0
RMF-40	3.5	0.0

Total 3.5 ac

RZN-2024-0028
EXHIBIT 'B'

The West 117.0 feet of the South 14.5 feet of Lot Two (2), and the West 117.0 feet of the North 35 feet of Lot Three (3), and the South 20 feet of Lot Three (3), and all of Lots Four (4), Five (5), and Six (6) in Block Seven (7), in I.W. Duncan's Addition to the City of Fayetteville, Washington County, Arkansas,

And

Lot One (1) and the South 15 feet of Lot Two (2), and all of Lots Three (3), Four (4), Five (5) and Six (6), in Block Six (6) in I. W. Duncan's Addition to the City of Fayetteville, Washington County, Arkansas

and

A part of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 16 North, Range 30 West, Washington County, Arkansas, and being described as follows, to-wit: Beginning at a point that is 660 feet (40 Rods) South of the Northeast corner of said forty-acre tract; said point being in Duncan Street in the City of Fayetteville; thence with said Street, South 45 feet; thence leaving said street, West 215.4 feet (Deed Call 220 feet) to a fence; thence North 45 feet along said fence; thence East 215.4 feet (Deed Call 220 feet) to the Point of Beginning.

and

A part of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 16 North, Range Thirty (30) West, Washington County, Arkansas, described as follows: Beginning at a point which is 705 feet South of the Northeast corner of said forty-acre tract; thence South 85 feet; thence West 220 feet; thence North 85 feet; thence East 220 feet to the Point of Beginning.

and

A part of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 16 North, Range 30 West, Washington County, Arkansas, described as follows: Beginning at a point which is 800 feet South of the Northeast corner of said forty-acre tract; and running thence South 60 feet; thence West 220 feet; thence North 60 feet; thence East 220 feet to the Point of Beginning.

and

A part of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 16 North, Range 30 West, Washington County, Arkansas, and being more particularly described as follows: Beginning at a point which is 800 feet South of the Northeast corner of said forty-acre tract; and running thence West 200 feet; thence North 10 feet; thence East 200 feet; thence South 10 feet to the point of the beginning.

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In support of its application for a zoning reclassification, the owner, developer, or buyer of this Property, (hereinafter "Petitioner") South Duncan, LLC, hereby voluntarily offers this Bill of Assurance to the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce the terms of this Bill of Assurance in the Circuit Court of Washington County, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will rely upon the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that the Property subject to the rezoning request shall be restricted as follows IF Petitioner's rezoning and large-scale development applications are approved and as a part of the approval process of the Fayetteville City Council:

1. The following uses shall not be permitted:
 - a. Unit 17, Transportation trades and services;
 - b. Unit 34, Liquor stores; and
 - c. Unit 45, Small scale production.
2. A Bill of Assurance containing the above restricted uses shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning and large-scale development application are approved and shall be noted on any Final Plat or Large Scale Development Plan of the Property. The Bill of Assurance will provide that the use restrictions will run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council.

IN WITNESS WHEREOF the undersigned Petitioner executes this document.

6/27/24
Date

4375 N. Vantage Drive Fayetteville, AR
Address

By: Vicki Bronson
Its: Authorized Agent

Vicki Bronson Agent
Signature

Notary Oath

STATE OF ARKANSAS }

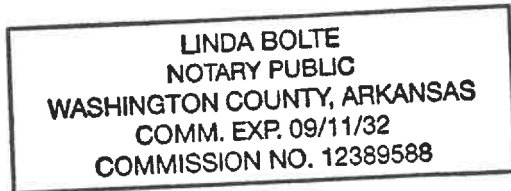
COUNTY OF WASHINGTON }

And now on this the 24 day of June, 2024, Vicki Bronson as authorized agent of South Duncan, LLC appeared before me, a Notary Public in and for said county and state, and after being placed upon her oath swore or affirmed that she did sign her name to the within and foregoing document in her capacity as authorized agent of South Duncan, LLC.

Linda Bolte
NOTARY PUBLIC

My Commission Expires:

9-11-32





TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Donna Wonsower, Planner

MEETING DATE: June 24, 2024 (UPDATED WITH MEETING RESULTS)

SUBJECT: **RZN-2024-0028: Rezoning (EAST OF HARMON FIELD ON S. DUNCAN AVE./MODUS STUDIO, 522):** Submitted by MODUS STUDIO for property located EAST OF HARMON FIELD ON S. DUNCAN AVE. The property is zoned RMF-40, RESIDENTIAL MULTIFAMILY, 40 UNITS PER ACRE and contains approximately 3.7 acres. The request is to rezone the property to MSC, MAIN STREET CENTER.

RECOMMENDATION:

Staff recommends **RZN-2024-0028** be forwarded to the City Council with a recommendation for approval.

RECOMMENDED MOTION:

*"I move to forward **RZN-2024-0028** to the City Council with a recommendation of approval."*

BACKGROUND:

The subject area is in central Fayetteville directly east of Harmon Field and 600 feet northeast of the Fayetteville High School building. The subject area contains ten parcels along S. Duncan Ave. containing a total of 3.7 acres split between two areas (1 acre and 2.7 acres) which have been developed with a range of uses from single-, two-, three-and four-family dwellings and larger apartment buildings. The existing structures were built between 1926 -1986. Additional details on each parcel is included in a staff attachment. The subject area is currently zoned RMF-40, Residential Multifamily, 40 Units per Acre and 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–	RMF-40, Residential Multifamily, 40 Units per Acre DG, Downtown General
South	Fayetteville High School Campus (Parking Lot / Driveway)	P-1, Institutional
East	Mixed-Density Residential	RMF-40, Residential Multifamily, 40 Units per Acre (Pending MSC, Main Street Center)
West	Harmon Field	P-1, Institutional

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. An additional commenter sent an email discussing both this rezoning and the rezoning across the street (RZN-2024-0018) and their potential impacts to the existing neighborhood fabric and residents, potential removal of affordable housing, environmental concerns, and concern about the developer trying to acquire properties for this rezoning.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

- Streets:** The subject area has frontage along S. Duncan Ave., a fully improved residential link street with asphalt paving, curb and gutter, and sidewalks. The subject area also has frontage along W. Treadwell St., a partially improved residential link street with asphalt and curb and gutter. 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 12-inch water main is present on the west side of S. Duncan Ave.
- Sewer:** Sanitary sewer is available to the subject area. An existing 6-inch sewer main is present on the west side of the subject property.
- 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 0.6 miles from the fire station with an anticipated drive time of approximately 3 minutes using existing streets. The anticipated response time would be approximately 5.2 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 11-12 for this site, with a weighted score of 17. The following elements of the matrix contribute to the score:

- 4 Minute Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (6" Sewer Main, S. Duncan Ave.)
- Near Water Main (12" Water Main, S. Duncan 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)
- 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 either large apartment structures or the Fayetteville High School campus, with mixed-density residential located to the east. The parcels within the subject area are currently developed with primarily single-family dwellings. Staff notes that since there is a gap in the proposed rezoning area occupied by an existing single-family dwelling, any development adjacent to this parcel would be subject to the additional setbacks of UDC 164.11(C) Home Protection Requirements.

Based on a review of addresses, there are a total of 42 residential dwelling units currently within the subject area. The existing RMF-40 district would permit a maximum of 148 dwelling units on the overall 3.7-acre subject area with a maximum building height of 5 stories, while the proposed MSC 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 38-98 years old with an average age of 71.5 years old. No completed permits aside from one electrical permit for the replacement of meter packs 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, and the subject area is not within a city historic district. An analysis of each parcel's current development is included in a staff exhibit.

The subject area is bound by RMF-40 to both the north and east, which permits multifamily developments and building heights of up to 5 stories. The Cardinal Apartments to the north and the Atmosphere Apartments to the east are both constructed at 5 stories including a parking garage. Harmon

Field, a major sports venue for Fayetteville Schools, is located to the west and the school intends to construct a parking lot extension directly south of the subject area. Additionally, a full city block adjacent to the property to the east was successfully rezoned to MSC with a bill of assurances at the June 18 City Council agenda. This area will likely be developed with a large mixed-use student housing complex. Other structures in direct proximity to the proposed rezoning area include a three-family dwelling and single-family residence south of the intersection of W. Putnam St. and S. Duncan Ave. Staff finds that the greater height permitted by MSC is not likely to negatively affect the surroundings given abutting multi-story apartments and the large school complex, particularly as any development would be limited to 5 stories when within 0'-15' of the front property line.

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.

Staff finds the rezoning both positively and negatively contributes to 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 could 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 greater density 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. Further, cities in Arkansas are prohibited from enacting rent control ordinances per Arkansas Statute.

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 directly east of the Fayetteville High School campus and approximately 600 feet 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 very high, with a weighted score of 17, 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 17 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 a public street and staff finds that given the property’s location near 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-2024-0028 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>June 24, 2024</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: CUBE	FORWARDED TO CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL				
Second: CASTIN					
Vote: 6-2-0 (WERNER & GARLOCK OPPOSED, MADDEN ABSENT)					

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
 - Proximity to Tier Center Exhibit
 - 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)

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.

**STAFF EXHIBIT
CURRENT DEVELOPMENT**

Individual Property Findings

65 S. Duncan Avenue (PID: 765-04823-001 & PID 765-04824-000)

- Current Owner: Pryor Properties LLC
- Two-story multifamily apartments (28 units) constructed in 1986 per Washington County Assessor (38 years old).
- Electrical Permit issues 9/23/2020 to replace four gang meter packs

77 S. Duncan Avenue (PID 765-04825-000)

- Current Owner: John E. Adam
- Single-family dwelling constructed in 1928 per Washington County Assessor (96 years old).

89 S. Duncan Avenue (PID 765-04810-000)

- Current Owner: Internation Student Christian
- Two-family dwelling constructed in 1926 per Washington County Assessor (98 years old).

93 S. Duncan Avenue (PID 765-04812-000)

- Current Owner" Lynch Family Trust:
- Three-family dwelling constructed in 1936 per Washington County Assessor (88 years old).

95 S. Duncan Ave (PID 765-04813-000)

- Current Owner: Well-Placed Inc.
- Single-family dwelling constructed in 1926 per Washington County Assessor (98 years old).
- One expired electrical permit (2019) and one voided mechanical permit.

99 S. Duncan Avenue (PID 765-04814-000)

- Current Owner: Samuel O. Donelson, Edward Mick, and Elizabeth S. Mick):
- Single-family dwelling constructed in 1926 per Washington County Assessor (98 years old).

101 S. Duncan Avenue (PID 765-14436-000)

- Current Owner: Edward Mick & Elizabeth S. Mick
- Single-family dwelling constructed in 1931 per Washington County Assessor (93 years old).

103 & 107 S. Duncan Avenue (PID 765-14441-000 and 765-14440-000)

- Current Owner: DFP LLC
- Four-family dwelling constructed in 1936 per Washington County Assessor. Single-family dwelling constructed in 1956 per Washington County Assessor (68 years old).

Statistics:

Total Existing Structures: Ten (10)

Total Existing Residential Units: Forty-two (42)

Average Age of Structures: 71.5 years



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: PROXIMITY TO TIER CENTERS (CITY PLAN 2040)

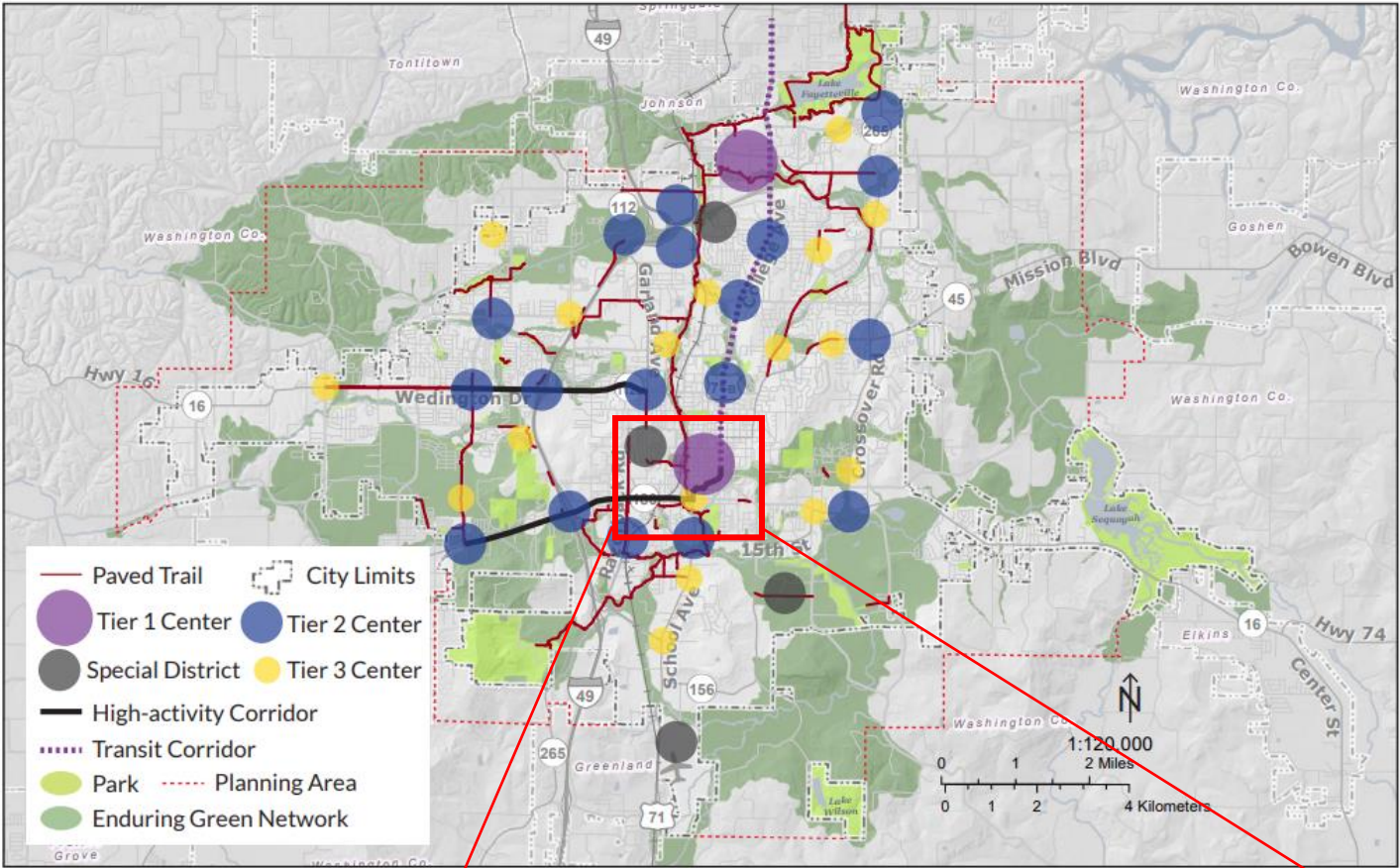
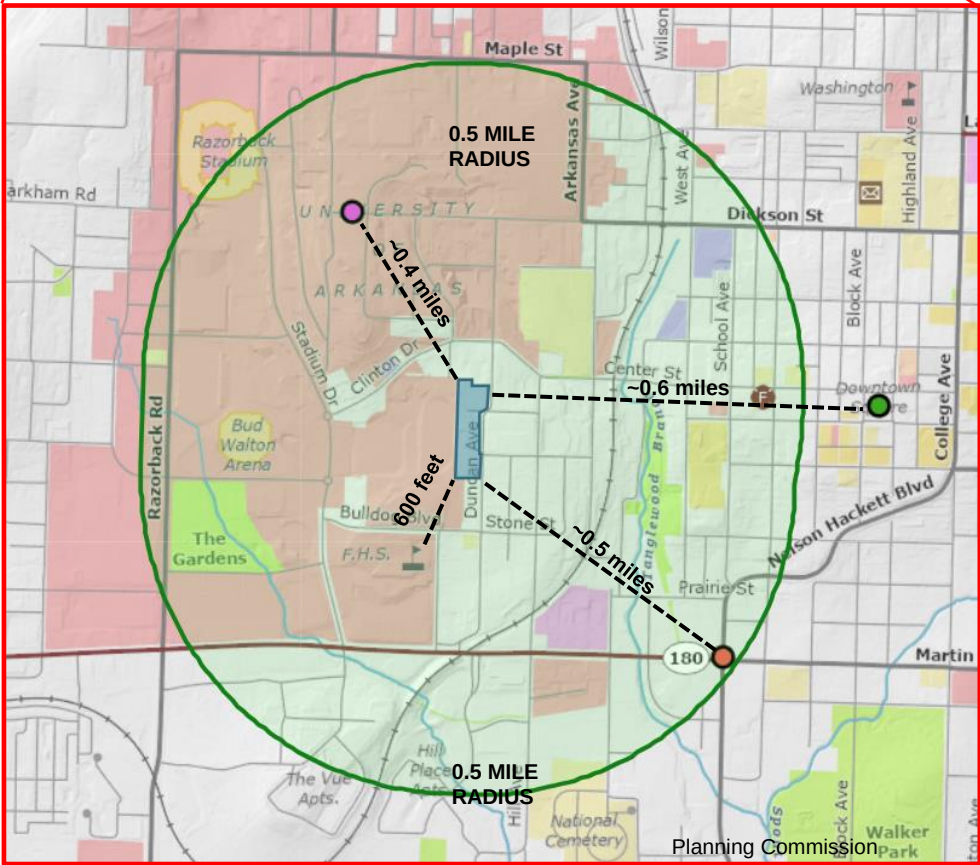


Figure 2.0 - Growth Concept Map



STAFF EXHIBIT: ENERGY ACTION PLAN EXCERPTS
STAFF EXHIBIT: TRAFFIC ACCIDENTS



Wonsower, Donna

From: Planning Shared
Sent: Tuesday, June 11, 2024 2:00 PM
To: Wonsower, Donna
Subject: FW: Treadwell/Hill/Duncan rezone & rzn2024-0028

For you

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: Tuesday, June 11, 2024 1:44 PM
To: Moore, Sarah <sarah.moore@fayetteville-ar.gov>; Wiederkehr, Mike <mike.wiederkehr@fayetteville-ar.gov>; Planning Shared <planning@fayetteville-ar.gov>
Subject: Treadwell/Hill/Duncan rezone & rzn2024-0028

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,

I'm still asking you vote "No" on this rezone. I understand the UofA needs more student housing but they need to put a cap back on their acceptance until they get caught up or they need to at least, build some student housing themselves, on their campus. They have plenty of parking lots they can make into parking decks with forms above. They have not built any new housing themselves since this mess started.

The City 2040 plan discusses pockets of neighborhood rezone to save certain neighborhoods, this should fall directly in that category. It's such a true neighborhood. It's all about the correct zoning for this area, and a seven story "Marshall" type building is not what needs to be here. When did we start letting developers run the city zoning and decide to turn our city into a faceless, overpriced metropolis?

It's so expensive to build that we can't build cheap enough to create new housing that's this affordable - we have to depend on the existing housing for that. Once it's gone, it's gone.

There is also one person, who owns one lot, across the street from us on Duncan and he is trying to also rezone that entire side of the neighborhood. He's posturing to the city, and the neighbors like he owns

more than he does and has agreed to more than he actually has. He is twisting some neighbor's arms into selling because he's fronting like he's definitely putting a huge seven story development across the street (between Duncan and the High School football field. One landlord in the rezone told me he has no plans to sell, another owner is on some sort of Estate ownership so nothing can be done or purchased until he passed away (and if he magically was forced to move, it'd kill him like other elderly friends I've had), and one lot is even excluded.

If both of these rezoned go through, the entire top of this hill will be stripped, not only of the housing but of the community, ALL OF THE TREES, the birds, foxes, racoons, opossum, deer, etc, the public green space, not to mention all of the transformers and infrastructure updates they would need to deal with all of the water runoff since 90% of the existing green space/previous surface (which is a lot) would be gone.

The attached photo is of the other rezoned, the yellow lot is the only lot he owns.

Please stop all of this madness and vote no, please don't let these developers come in here and lie and scare people into selling their homes for greed. It's all purely about money and it shouldn't be.

Thank you for your time,

Kathryn Cook

Wonsower, Donna

From: Planning Shared
Sent: Monday, June 24, 2024 4:19 PM
To: Wonsower, Donna
Subject: FW: RZN-2024-0028
Attachments: PXL_20240624_153431668.jpg; PXL_20240624_153524589.jpg; PXL_20240624_153447904.jpg; PXL_20240606_150902674.jpg; PXL_20240621_022411716.jpg; PXL_20240621_142912313.jpg

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: Monday, June 24, 2024 2:21 PM
To: Planning Shared <planning@fayetteville-ar.gov>
Cc: Moore, Sarah <sarah.moore@fayetteville-ar.gov>; Turk, Teresa <teresa.turk@fayetteville-ar.gov>
Subject: RZN-2024-0028

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.

Please, I am begging you to not send this to City Council. Please vote 'No'. Any rezone here should be to protect the neighborhood and the habits and ecosystems. I have attached pictures.

Also, many neighbors have said they don't plan to sell and others are only selling because this developer has been posturing like he owns more than the one lot he owns, and has been essentially making them feel like they have no choice but to sell. This type of thing has been forcing out people who have lived here for 50 years. Not to mention, one person has a Life Estate so they can't do anything until he dies but they've said they want him out. This is what we're doing?

Our city has the opportunity to save this area. The ecosystem alone. Many of us want to request and habitat study. We have owls, deer, groundhogs, foxes, cats, birds - owls, Mississippi Kite, Eagle, etc. so many homes. How will the removal and destruction of the area be addressed? Will they be rehomed or ran into the streets? If you look at a current Google maps image that shows the actual trees, you'll see 50% of these lots are covered in beautiful, untouched nature that deserves to be preserved.

Not to mention the steep grade down to the high school football field. How will this affect that drainage and will it be seven stories on the street edge or the high school edge? Depending, the building could be an echo monstrosity on the football field side.

The UofA has yet to build its own fair share of housing. They have plenty of parking lots that can be turned into three story parking decks (triples parking) with student housing above.

Please reconsider and thank you for your time and consideration.

-Kathryn Cook



Wonsower, Donna

From: Wonsower, Donna
Sent: Thursday, June 6, 2024 8:21 AM
To: hoghouse104@gmail.com
Cc: Curth, Jonathan
Subject: RE: FW: RZN-2024-0018; Request to Table
Attachments: 03 - rezoning request letter_v1.pdf; 04 - bill of assurance_v2.pdf

Good Morning,

See attached for the request letter and proposed bill of assurances for RZN-2024-0028. This item is scheduled to be heard at the June 24 Planning Commission meeting, and I will save your email for inclusion in the Planning Commission packet. Please let me know if you have any further comments you would like to see included.

Please note that the "Approved" stamp on the drawings is only an indication that the document is ready to be heard at the commission and is not an indication of overall project approval.

Best Regards,
Donna Wonsower, AICP Candidate (she/her)
Planner, Development Services

479-575-8358

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Curth, Jonathan <jcurth@fayetteville-ar.gov>
Sent: Thursday, June 6, 2024 8:09 AM
To: Wonsower, Donna <dwonsower@fayetteville-ar.gov>
Subject: FW: FW: RZN-2024-0018; Request to Table

Donna,

During the back-and-forth keeping the public apprised about the Treadwell zoning's tabling at this week's Council, I received the request below for information about the rezoning west of Duncan. It appears you are considering this one as well, right? If so, please accommodate the request below for information on RZN-2024-0028.

Thanks in advance,

Jonathan Curth, AICP
Development Services Director
Development Services Department
City of Fayetteville, Arkansas
jcurth@fayetteville-ar.gov
479.575.8308

From: Scott and Jasmine 104 Duncan <hoghouse104@gmail.com>
Sent: Wednesday, June 5, 2024 6:08 PM
To: Curth, Jonathan <jcurth@fayetteville-ar.gov>
Subject: Re: FW: RZN-2024-0018; Request to Table

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, Jonathan! Do you mind sending me the information about the rezoning request for RZN-2024-0028 when it's available? It looks like this is a similar request for MSG. I don't see how the infrastructure in this area could handle this large of an increase in density. We'll be submitting comments in objection for this one too.

Jasmine Nile

On Wed, Jun 5, 2024 at 8:29 AM Curth, Jonathan <jcurth@fayetteville-ar.gov> wrote:

Certainly, and to confirm, the item was indeed tabled to the next Council meeting on June 18th.

Thanks,

Jonathan Curth, AICP

Development Services Director

Development Services Department

City of Fayetteville, Arkansas

jcurth@fayetteville-ar.gov

479.575.8308

From: Scott and Jasmine 104 Duncan <hoghouse104@gmail.com>
Sent: Tuesday, June 4, 2024 4:05 PM
To: Curth, Jonathan <jcurth@fayetteville-ar.gov>
Subject: Re: FW: RZN-2024-0018; Request to Table

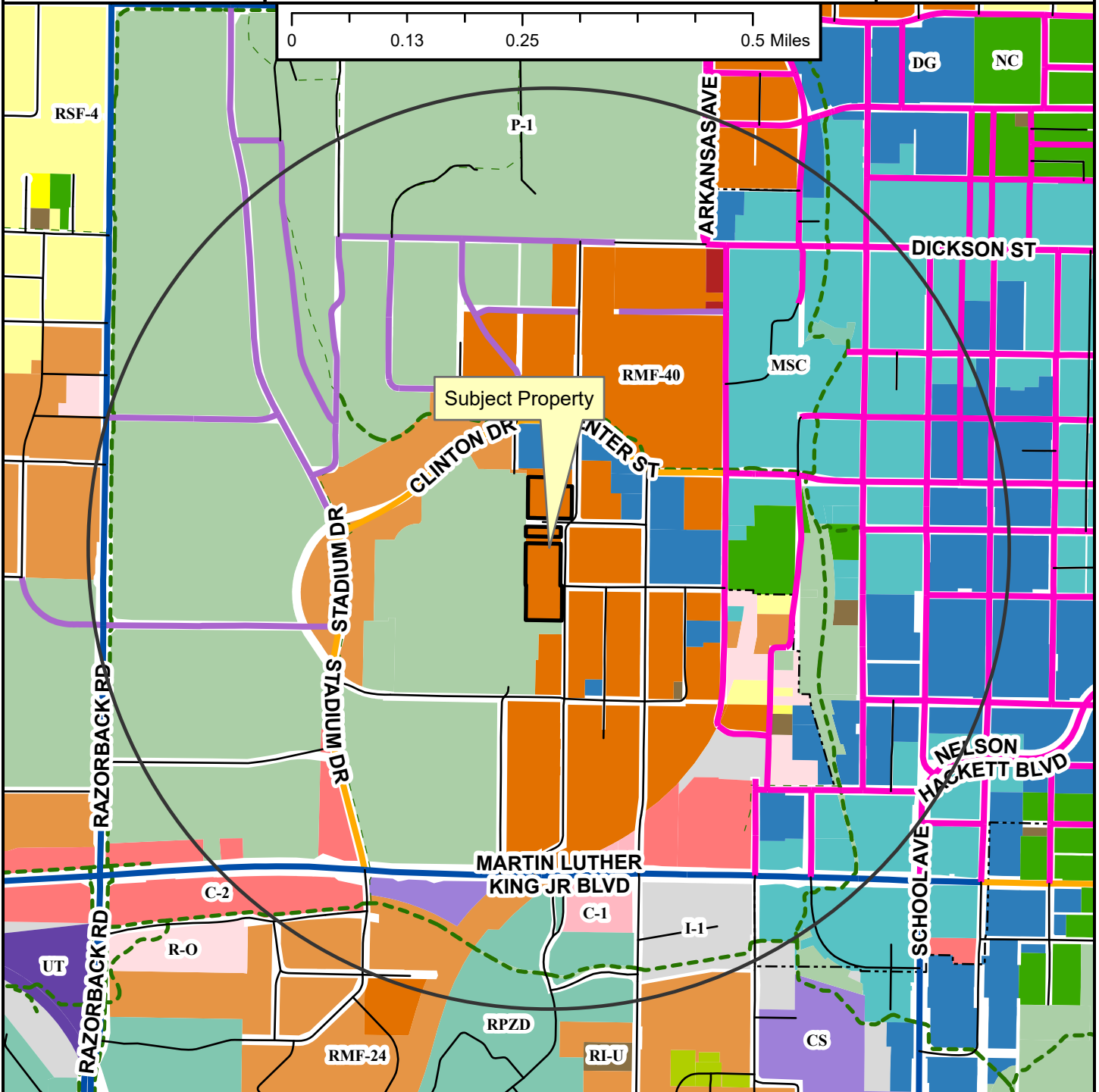
RZN-2024-0028

65 S. DUNCAN AVE

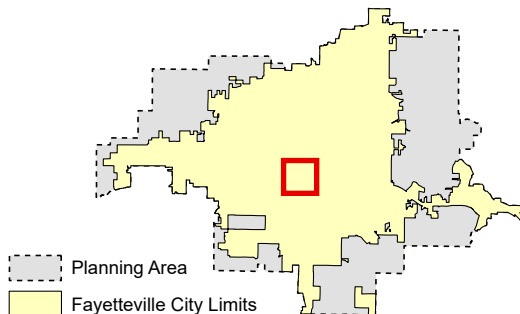
One Mile View



0 0.13 0.25 0.5 Miles



- 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**
- 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-13
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
 - I-2 General 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
 - P-1

Planning Commission

June 24, 2024

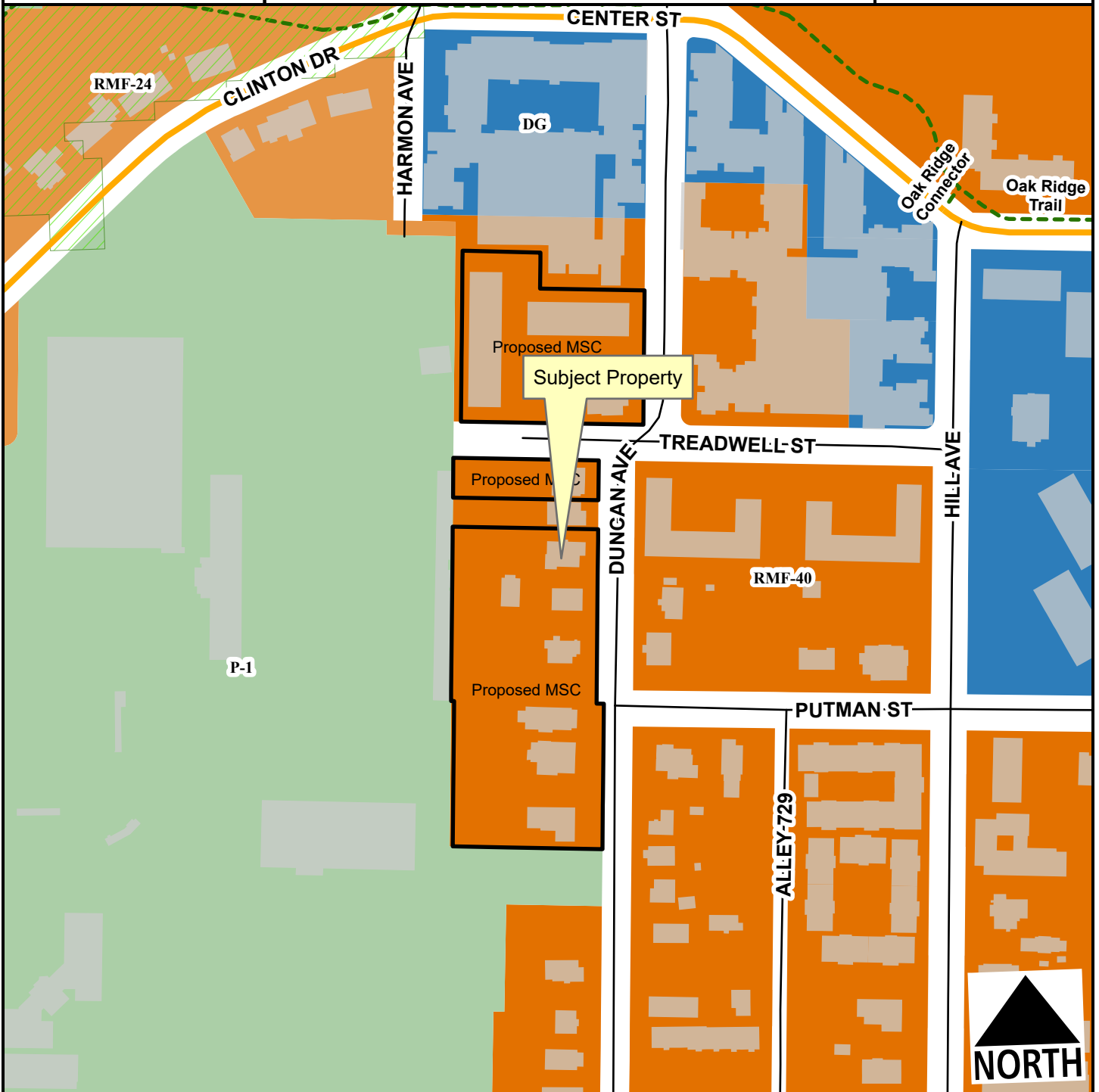
RZN-2024-0028 (MODUS STUDIO) 365 of 594

Page 25 of 28

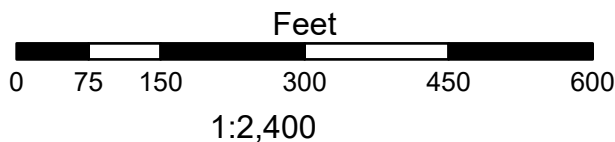
RZN-2024-0028

65 S. DUNCAN AVE

Close Up View

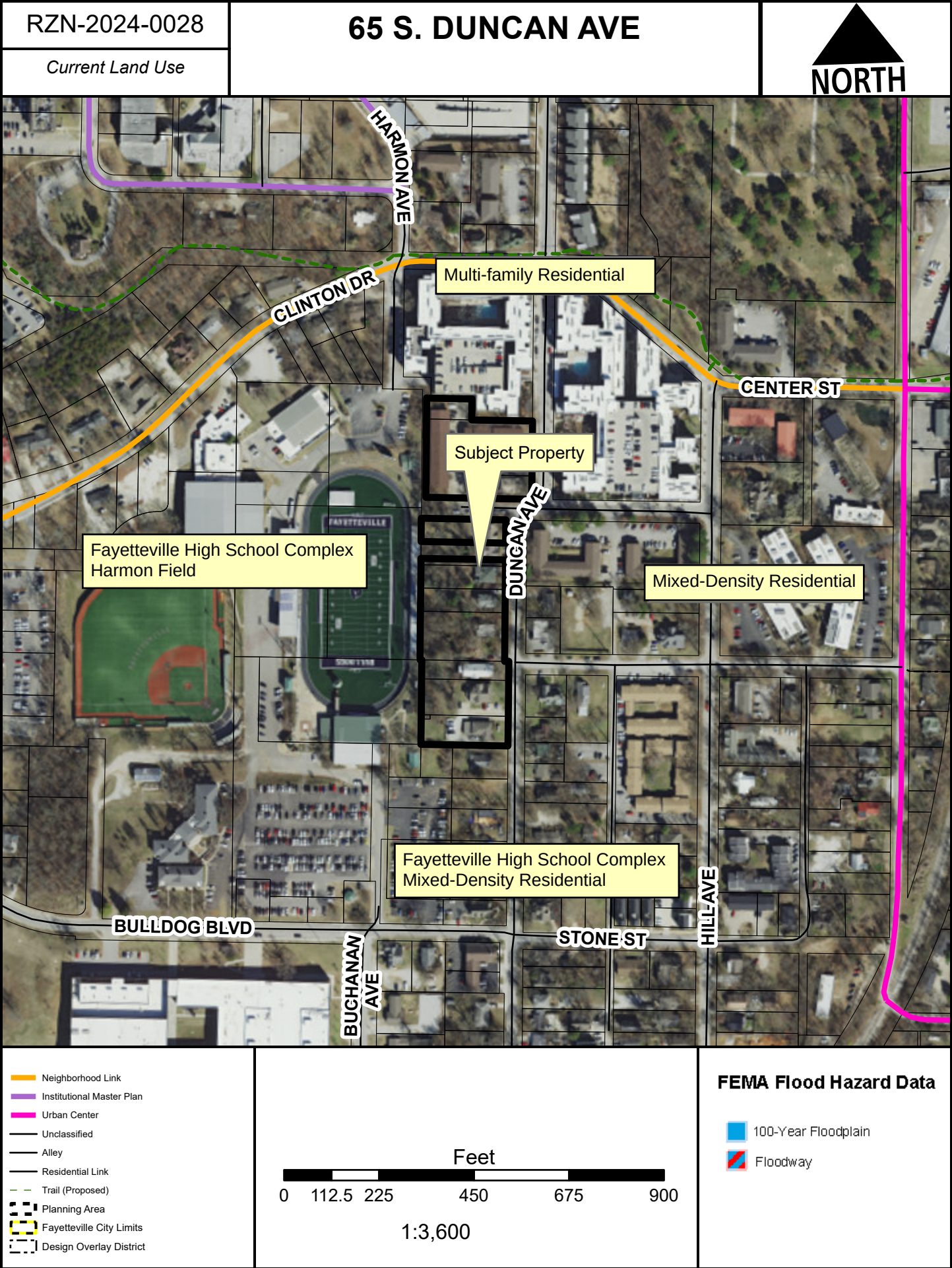


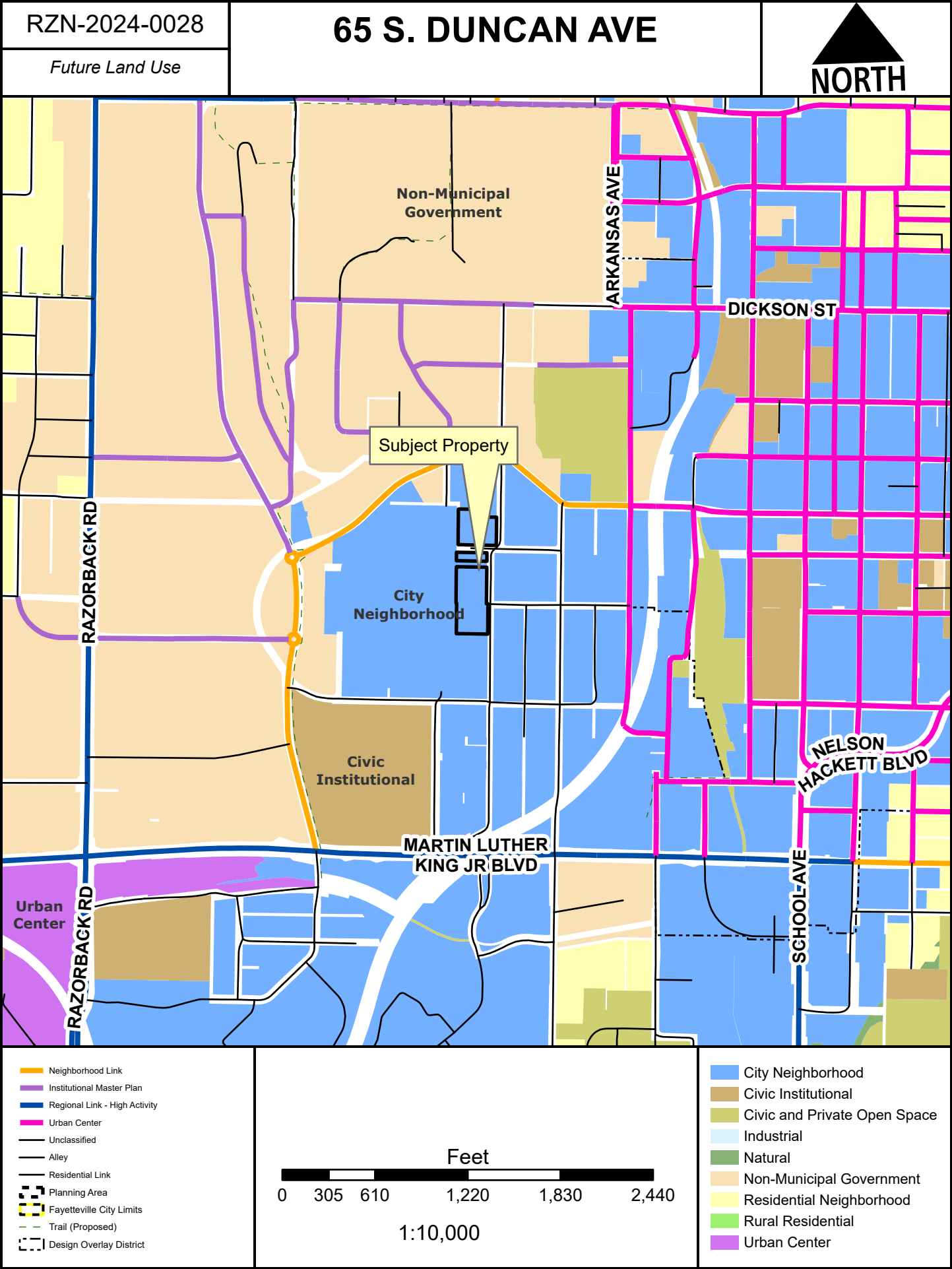
- Neighborhood Link
- Alley
- Residential Link
- Hillside-Hilltop Overlay District
- Planning Area
- Fayetteville City Limits



Zone	Current	Proposed
MSC	0.0	3.5
P-1	0.0	0.0
RMF-40	3.5	0.0

Total 3.5 ac





PUBLIC COMMENTS RECEIVED AFTER PACKET FINALIZED

From: Green, Jana <Jana.Green@adtalem.com>

Sent: Wednesday, June 26, 2024 3:47 PM

To: Planning Shared <planning@fayetteville-ar.gov>

Subject: RZN-2024-0028 (EAST OF HARMON FIELD ON S. DUNCAN AVE)

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'm trying to find out more about the rezoning of my apartment building on S. Duncan Ave. I missed the hearing because I had the wrong date, sent to me by the attorney's office. **RZN-2024-0028 (EAST OF HARMON FIELD ON S. DUNCAN AVE)**

I need to know how long it will be before they plan on tearing down the property. I also want to note that these apartments and the ones across the street on Treadwell are some of the LAST affordable rentals in Fayetteville, I'm not sure where you expect people with lower incomes to live, but it clearly isn't in this town or the surrounding area. There has been a housing crisis declared, but there has been no indication that anything will be done except to proceed to exclude those with lower incomes and fewer options. It's very unfortunate given that Fayetteville was once an incredibly inclusive community.

Please send any information you can on the timeline so I can act accordingly and inform my neighbors. Thank you.

Regards,

Jana D. Green | Representative II, Global Transcript Evaluation Team | Institutional Support Services

E jana.green@adtalem.com

500 W Monroe St. | Chicago, IL 60661 | adtalem.com

ADTALEM
GLOBAL EDUCATION

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In support of its application for a zoning reclassification, the owner, developer, or buyer of this Property, (hereinafter "Petitioner") South Duncan, LLC, hereby voluntarily offers this Bill of Assurance to the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce the terms of this Bill of Assurance in the Circuit Court of Washington County, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will rely upon the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that the Property subject to the rezoning request shall be restricted as follows IF Petitioner's rezoning and large-scale development applications are approved and as a part of the approval process of the Fayetteville City Council:

1. The following uses shall not be permitted:
 - a. Unit 17, Transportation trades and services;
 - b. Unit 34, Liquor stores; and
 - c. Unit 45, Small scale production.
2. A Bill of Assurance containing the above restricted uses shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning and large-scale development application are approved and shall be noted on any Final Plat or Large Scale Development Plan of the Property. The Bill of Assurance will provide that the use restrictions will run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council.

IN WITNESS WHEREOF the undersigned Petitioner executes this document.

6/27/24
Date

4375 N. Vantage Drive Fayetteville, AR
Address

By: Vicki Bronson
Its: Authorized Agent

Vicki Bronson Agent
Signature

Notary Oath

STATE OF ARKANSAS }

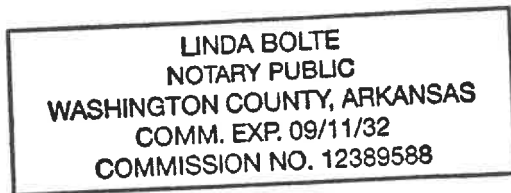
COUNTY OF WASHINGTON }

And now on this the 24 day of June, 2024, Vicki Bronson as authorized agent of South Duncan, LLC appeared before me, a Notary Public in and for said county and state, and after being placed upon her oath swore or affirmed that she did sign her name to the within and foregoing document in her capacity as authorized agent of South Duncan, LLC.

Linda Bolte
NOTARY PUBLIC

My Commission Expires:

9-11-32



BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of my request for a zoning reclassification of MSC, Main Street Center for the following property: see legal description on Exhibit A attached, I, as the authorized agent for the owner or buyer of this property, Vicki Bronson (hereinafter called "Petitioner") 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 **reasonably 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 requested rezoning is approved by the Fayetteville City Council:

Specific activities that will not be allowed upon Petitioner's property include:

Unit 17, transportation trade services

Unit 34, liquor stores

Unit 45, small scale production

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 as part of the rezoning ordinance. After Petitioner's rezoning is effective, the Bill of Assurance shall be noted on any Final Plat, Large Scale Development, or other development approval which includes some or all of Petitioner's property affected by the rezoning.

IN WITNESS WHEREOF and in agreement with all the terms and conditions

stated above, I, Vicki Bronson, as the authorized agent of Petitioner voluntarily offer all such assurances and sign my name below.

Vicki Bronson
Printed Name of Authorized Agent

Authorized Agent
Position or Title of Authorized Agent

Vicki Bronson
Signature

7/16/24
Date

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

On this, the 16th day of July 2024, before me, the undersigned notary, personally appeared Vicki Bronson, known to me (or satisfactorily proven) to be the person(s) whose name is/are subscribed to the above and, after being placed upon their oath, swore or affirmed that they were authorized to sign the above Bill of Assurance, agreed with the terms of the Bill of Assurance, and executed the Bill of Assurance in an attempt to have their property rezoned as requested.

Cristi Lyn Maxwell
NOTARY PUBLIC

My Commission Expires:
11-8-33



EXHIBIT A
Legal Description

The West 117.0 feet of the South 14.5 feet of Lot Two (2) and the West 117.0 feet of the North 35 feet of Lot Three (3) Block Seven (7), 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.

and

Twenty (20) feet of equal and uniform width off the South side of Lot Numbered Three (3), all of Lots Four (4) and Five (5) and all Lot Numbered Six (6), except one hundred fifty (150) feet of equal and uniform width off the East end of Lot Six (6), all in Block Seven (7) in I. W. Duncan's Addition to the City of Fayetteville, Arkansas.

and

One hundred fifty (150) feet of equal width off the East end of Lot Numbered Six (6) in Block Numbered Seven (7) in I. W. Duncan's Addition to the City of Fayetteville, as designated upon the recorded plat of said Addition.

and

Lot 1, Block 6, I. W. Duncan's Addition to the City of Fayetteville, Arkansas, as shown on plat of record in Plat Book 4 at Page 192, plat records of Washington County, Arkansas.

and

The North forty (40) feet of Lot Numbered Two (2) in Block Numbered Six (6) 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.

and

15 feet of equal and uniform width off the South side of Lot Numbered 2 and 45 feet of equal and uniform width off the North side of Lot Numbered 3 in Block Numbered 6 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.

and

Ten (10) feet of equal and uniform width off the South side of Lot Numbered Three (3) and all of Lot Numbered Four (4) in Block Numbered Six (6) in 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.

and

Lots Numbered Five (5) and Six (6) in Block Numbered (6) in I. W. Duncan's Addition to the City of Fayetteville, as shown and designated upon the recorded plat of said Addition, EXCEPT a strip of equal and uniform width of fifteen (15) feet off the South side of said Lot Six (6).

and

A part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 16, Township 16 North, Range 30 West, of the Fifth Principal Meridian, Washington County, Arkansas, and being described as follows, to-wit: Beginning at a point that is 660 feet (40 Rods) South of the NE corner of said forty acre tract; said point being in Duncan Street in the City of Fayetteville; thence with said Street, South 45 feet; thence leaving said street, West 215.4 feet (Deed Call 220 feet) to a fence; thence North 45 along said fence; thence East 215.4 feet (Deed Call 220 feet) to the Point of Beginning, containing 0.22 acres, more or less. Subject to that portion that lies in Duncan Street on the East.

and

A part of the Northwest Quarter (NW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 16 North, Range Thirty (30) West, Washington County, Arkansas, described as follows: Beginning at a point which is 705 feet South of the Northeast corner of said forty-acre tract, thence South 85 feet; thence West 220 feet; thence North 85 feet; thence East 220 feet to the point of beginning.

and

A part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 16, Township 16 North, Range 30 West, Washington County, Arkansas, described as follows: Beginning at a point which is 800 feet South of the NE corner of said 40-acre tract; and running thence South 60 feet; thence West 220 feet; thence North 60 feet; thence East 220 feet to the point of beginning.

and

a part of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 16, Township 16 North, Range 30 West, of the Fifth Principal Meridian, and being more particularly described as follows: Beginning at a point which is 800 feet South of the NE corner of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 16, Township 16 North, Range 30 West, and running thence West 200 feet; thence North 10 feet; thence East 200 feet; thence South 10 feet to the point of the beginning.



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
Kara Paxton, City Clerk/Treasurer

CC: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director

FROM: Kit Williams, City Attorney

DATE: July 16, 2024

RE: Proposed rezoning on South Duncan

Attached please find the proposed revised rezoning ordinance which now states it is subject to the revised proffered Bill of Assurance submitted by the applicant. Once the applicant officially offers this Bill of Assurance to remove transportation trade services, liquor stores, and small scale production facilities as permitted uses from its requested Main Street Center rezoning, I will ask the City Council to amend the initial rezoning ordinance to the new one with "subject to a bill of assurance" added.

The motion should be to amend the current ordinance to the one attached to this memo (or handed out at this meeting) and amend the previously mentioned Bill of Assurance to the new slightly amended and improved Bill of Assurance (which is attached to this memo).

These two amendments in one motion should occur before public comment so that the public can comment if they desire to about the Bill of Assurance as well as the proposed rezoning itself.

ORDINANCE NO. _____

AN ORDINANCE TO REZONE THE PROPERTY DESCRIBED IN REZONING PETITION RZN 2024-28 FOR APPROXIMATELY 3.7 ACRES LOCATED EAST OF HARMON FIELD ON SOUTH DUNCAN 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 the attached 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.

PASSED and APPROVED this 16th day of July, 2024.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer

BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of my request for a zoning reclassification of MSC, Main Street Center for the following property: see legal description on Exhibit A attached, I, as the authorized agent for the owner or buyer of this property, Vicki Bronson (hereinafter called "Petitioner") 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 **reasonably rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

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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 as part of the rezoning ordinance. After Petitioner's rezoning is effective, the Bill of Assurance shall be noted on any Final Plat, Large Scale Development, or other development approval which includes some or all of Petitioner's property affected by the rezoning.

IN WITNESS WHEREOF and in agreement with all the terms and conditions

stated above, I, Vicki Bronson, as the authorized agent of Petitioner voluntarily offer all such assurances and sign my name below.

Vicki Bronson
Printed Name of Authorized Agent

Authorized Agent
Position or Title of Authorized Agent

Vicki Bronson
Signature

7/16/24
Date

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

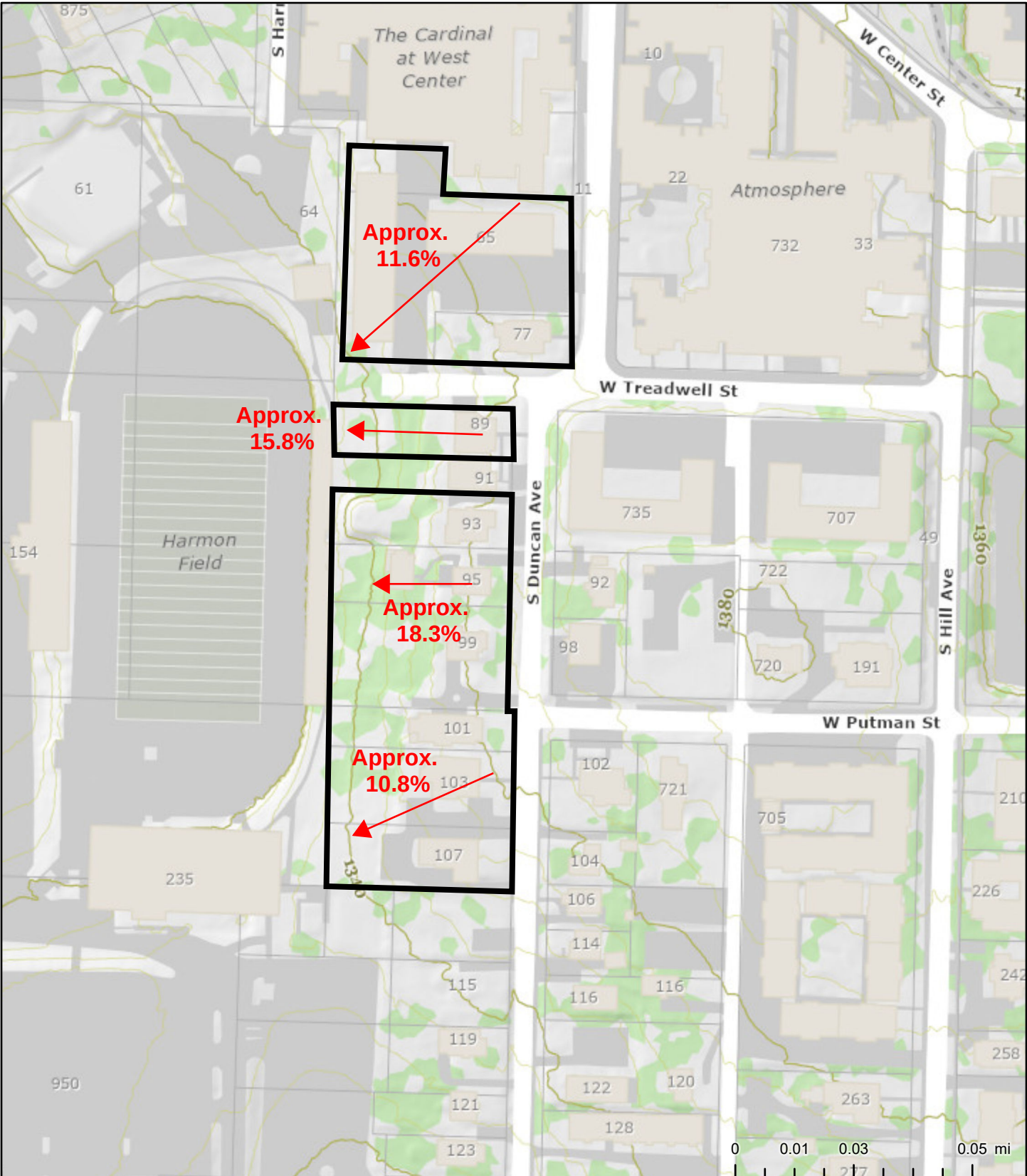
On this, the 16th day of July 2024, before me, the undersigned notary, personally appeared Vicki Bronson, known to me (or satisfactorily proven) to be the person(s) whose name is/are subscribed to the above and, after being placed upon their oath, swore or affirmed that they were authorized to sign the above Bill of Assurance, agreed with the terms of the Bill of Assurance, and executed the Bill of Assurance in an attempt to have their property rezoned as requested.

Cristi Lyn Maxwell
NOTARY PUBLIC

My Commission Expires:

11-8-33





 Overall Subject Property

Topography Exhibit

RZN-2024-0028

The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user; and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.

Created: 8/1/2024
Credits: City of Fayetteville, AR
Map Author:



CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF AUGUST 6, 2024

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Jonathan Curth, Development Services Director

DATE: August 1, 2024

SUBJECT: UA Student Housing

BACKGROUND:

At the July 16, 2024 City Council meeting, councilmember inquiries were made about off-campus students enrolled at the University of Arkansas-Fayetteville (UA). These questions were posed in the context of a rezoning request (RZN-2024-0028) for approximately 3.7 acres of land on the west side of S. Duncan Avenue near Fayetteville High School and situated between the main UA campus to the north and the expanding UA School of Art facilities to the south.

SUMMARY:

- 2023 UA student enrollment was 32,140, an increase of 86.1% since 2004
- Current on-campus housing totals 6,229 beds, 2,800 of which were opened since 2004
 - UA has entered in to off-campus master leases for approximately 1,200 beds in 2024
 - 1,265 new on-campus beds are proposed for Summer 2027
- An estimated 24,000 UA students live off campus
- Five projects in various states of development review are identified as fully- or partially student oriented, constituting an approximate 3,400 beds

DISCUSSION:

To ground any consideration of UA students, a clear understanding of their number and the University's enrollment growth is important. Between 2004 and 2023, student enrollment increased 86.1%, from 17,269 to 32,140. Most prominently, between 2010 and 2012, and 2021 and 2023, enrollment increased by more than 1,200 students annually.

Over the same time, the availability of on-campus UA housing has grown at a slower rate despite the addition of 2,800 new beds with projects like Maple Hill East and West, the Duncan Avenue Apartments, and Adohi Hall. Combined with older facilities, the UA has 6,229 on-campus beds spread among dorms, suites, apartments, and other housing types.

This is not adequate to house the approximately 6,400 freshman that enrolled in Fall of 2023, which is a factor, when combined with the COVID pandemic, in the UA loosening their policy for the requirement of freshman to live on-campus. To partially address this shortfall, the UA

entered in to master leases with off-campus housing providers. In 2023, this included 720 beds with estimates for 2024 exceeding 1,200 beds. Additionally, the UA undertook a housing study that recommends construction of additional on-campus housing, with plans underway for 1,265 new, on-campus beds in the Maple Hill area. Combined, this represents about 8,600 beds when considering currently available, on-campus bedrooms, properties under master lease, and the new, on-campus housing scheduled to open Summer of 2027.

Expanding beyond freshman enrollment and housing needs, 2023 UA data suggests there are approximately 20,604 undergraduate students living off-campus, or approximately 75% of the total. Less apparent is the number of graduate students, who totaled 4,668 in 2023, that are housed off-campus. Taking a conservative estimate and assuming comparable proportions of graduate and undergraduates live off-campus, indicates that an estimated 24,000 UA students seek off-campus housing.

Perhaps unsurprisingly, a robust private market for student housing has resulted. While there is not readily identifiable data on the number of existing units and beds utilized for off-campus students, development review staff are familiar with the nature and intended occupants of many incoming residential projects. Currently, this includes five locations with student-oriented projects in varying stages of development, ranging from recently rezoned to nearing construction permitting. Based on the current details for these projects, all are intended to be fully or partially marketed towards students with an overall bed count of 3,415.

Attachments:

- Table 1: UA Enrollment
- Table 2: On-Campus UA Housing & Master Leases
- Table 3: Off-Campus Student Estimates
- Table 4: Pending/In-Development Student Housing

Table 1: UA Enrollment

Enrollment			
Year	Total Enrollment	% YoY Change	# YoY Change
2023	32,140	3.9%	1,204
2022	30,936	6.4%	1,868
2021	29,068	5.5%	1,506
2020	27,562	0.0%	3
2019	27,559	-0.8%	(219)
2018	27,778	0.8%	220
2017	27,558	1.3%	364
2016	27,194	1.6%	440
2015	26,754	2.0%	517
2014	26,237	3.5%	896
2013	25,341	3.3%	804
2012	24,537	5.8%	1,338
2011	23,199	8.4%	1,794
2010	21,405	7.8%	1,556
2009	19,849	3.4%	655
2008	19,194	2.9%	546
2007	18,648	4.0%	722
2006	17,926	0.6%	105
2005	17,821	3.2%	552
2004	17,269	-	-
TOTAL Change 2004-2023		86.1%	14,871

Source: UA Office of Strategic Analytics & Insights

Table 2: On-Campus UA Housing & Master Leases

On-Campus Housing & Master Leases		
2024	On-campus	Notes
Traditional	3,373	
Semi-suite	828	
Suites	1,632	
Apartments	188	
Staff	208	
TOTAL Existing On-Campus	6,229	
Proposed New	1,265	Maple Hill North: 645, Maple Hill Central: 620 - SUMMER 2027
TOTAL On-Campus Summer 2027	7,494	
Master Leased	1,257	Versus 720 in 2023 (Marshal, Cardinal, Locale, Ozark Villas)
TOTAL On- & Off-Campus Leases	8,751	

Source: Vice Chancellor Battjes presentation to Spring 2024 Town & Gown

Table 3: Off-Campus Student Estimates

Off-Campus Student Estimates		
2023 Enrollment	Total	Off-Campus Est.
Undergraduate Students	27,472	
Off-campus/Commuter Undergrads		20,604 *
Graduate Students	4,668	
Off-campus/Commuter Grads		3,501 **
TOTAL Off-Campus Estimate		24,105

*Based on source estimate of 75% of undergrads as off-campus/commuter
 **Assuming comparable proportion of graduate students as off-campus/commuter

SOURCE: UA Common Data Set (College Board, Peterson's, US News & World Report collaboration)

Table 4: Pending/In-Development Student Housing

Pending/In-Development Student Housing		
Parcel Number (Project Name)	Units	Beds
765-13732-012 (Axis)	209	630
765-14008-000 (1301 N. Gregg Ave.)	174	650
Various (151 Dickson)	185	611
Various (612 Center)	226	674
Various (Subtext)	270	850
W. of Duncan (Unknown)	Unknown	
TOTAL Pending/In-Development Off-Campus		3,415
On-Campus (Maple Hill)		1,265
TOTAL Pending/In-Development On- & Off-Campus		4,680



MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council
THRU: Paul Becker, Chief Financial Officer
FROM: Steven Dotson, Internal Auditor
SUBJECT: **Sales and Use Tax Bonds (Issuance Authorization)**

RECOMMENDATION:

Recommend approval of an ordinance authorizing the issuance and sale of the City's not to exceed \$15,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2024, for the purpose of financing all or a portion of the costs of certain street and park facilities and improvements.

BACKGROUND:

Note: Final documents will be attached to this item when available.

The City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance and refinance the costs of various capital improvements such as those comprising the Streets Project and the Parks Project which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act.

Pursuant to the election ordinance (Ordinance 6126) adopted and approved on December 18, 2018 there was submitted to the qualified electors of the City various questions regarding the issuance of capital improvement bonds for the purpose of financing all or a portion of the costs of the various capital improvements, including the Projects, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of one percent (1.00%) pursuant to the Local Government Bond Act (the "Sales and Use Tax").

At a special election held April 9, 2019, a majority of the qualified electors of the City voting on each of the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the Sales and Use Tax, and the pledge of the receipts thereof to the payment of the bonds)

DISCUSSION:

After the previous bond issues in 2019 and 2022, approximately \$15,000,000 of the approved funding remains to be issued.

As authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

Improvement Bonds, Series 2024, in the aggregate principal amount of not to exceed \$15,000,000 (the “Series 2024 Bonds”), in order to provide funding for all or a portion of the costs of the Projects.

BUDGET/STAFF IMPACT:

Funding will be provided by issuance of Sales and Use Tax Capital Improvement Bonds

ATTACHMENTS: SRF (#3), Bond Ordinance (#4), Bond Purchase Agreement (#5), Preliminary Official Statement (#6), Continuing Disclosure Agreement (#8), Second Supplemental Trust Indenture (#9)

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 #: 2024-365

Sales and Use Tax Bonds (Issuance Authorization)

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED \$15,000,000 SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2024, FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CERTAIN STREET AND PARK FACILITIES AND IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a need for a source of revenues to finance all or a portion of the costs of critical capital improvement projects, including (1) streets and related improvements (the "Streets Project"), and (2) parks system and related improvements (the "Parks Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance and refinance the costs of various capital improvements such as those comprising the Streets Project and the Parks Project (collectively, the "Projects"), which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to Amendment 62 and the Local Government Bond Act and the provisions of Ordinance No. 6126 of the City, adopted and approved on December 18, 2018 (the "Election Ordinance"), there was submitted to the qualified electors of the City various questions regarding the issuance of an aggregate of not to exceed \$213,865,000 in principal amount of capital improvement bonds for the purpose of financing all or a portion of the costs of the various capital improvements, including the Projects, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of one percent (1.00%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held April 9, 2019, a majority of the qualified electors of the City

voting on each of the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the Sales and Use Tax, and the pledge of the receipts thereof to the payment of the bonds); and

WHEREAS, pursuant to Amendment 62 and the Local Government Bond Act, as approved by the qualified electors of the City, and as authorized by of Ordinance No. 6194 of the City, adopted and approved on June 4, 2019, the City has previously issued (i) its \$124,425,000 Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), (ii) its \$3,170,000 Sales and Use Tax Capital Improvement Bonds, Taxable Series 2019B (the “Series 2019B Bonds”), and (iii) its \$74,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”);

WHEREAS, the Series 2019B Bonds have been paid in full; and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2024, in the aggregate principal amount of not to exceed \$15,000,000 (the “Series 2024 Bonds”), in order to provide funding for all or a portion of the costs of the Projects; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Series 2024 Bonds to Stephens Inc., Fayetteville, Arkansas (the “Underwriter”), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the “Bond Purchase Agreement”) in substantially the form presented to and before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as “Sales and Use Tax Capital Improvement Bonds, Series 2024” (the “Series 2024 Bonds”). The Series 2024 Bonds shall be issued in the original aggregate principal amount of not to exceed Fifteen Million Dollars (\$15,000,000) and shall mature not later than November 1, 2033, in the principal amounts and bearing interest at the rates to be specified in the Bond Purchase Agreement. The average yield on the Series 2024 Bonds as a whole shall not exceed 5.00% per annum. Of the \$15,000,000 maximum aggregate principal amount of Series 2024 Bonds hereby authorized, (i) not to exceed \$10,105,000 shall be deemed to apply to the Streets Project (Question 2 on the ballot), and (ii) not to exceed \$4,895,000 shall be deemed to apply to the Parks Project (Question 5 on the ballot), and the proceeds of the Series 2024 Bonds shall be allocated accordingly. The proceeds of the Series 2024 Bonds will be utilized to finance all or a portion of the costs of the Projects described above, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2024 Bonds.

The Series 2024 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Second Supplemental Trust Indenture submitted

to this meeting. The Mayor is hereby authorized and directed to execute and deliver the Series 2024 Bonds in substantially the form thereof contained in the Second Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2024 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2024 Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas (“Bond Counsel”), in order to complete the Series 2024 Bonds in substantially the form contained in the Second Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2024 Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Series 2024 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of an existing one percent (1.00%) Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Series 2024 Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the Series 2019A Bonds and the Series 2022 Bonds. The levy and collection of the Sales and Use Tax shall continue until such time as the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Trust Indenture (defined below) to redeem the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Series 2024 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Second Supplemental Trust Indenture (the “Second Supplemental Trust Indenture”), by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”), and the City Clerk is hereby authorized and directed to execute and acknowledge the Second Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Second Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Second Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of August 1, 2019, as previously supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, each by and between the City and the Trustee (collectively, the “Original Indenture,” and as further supplemented and amended by the Second Supplemental Trust Indenture, the “Trust Indenture”). The Second Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of the Sales and Use Tax receipts and the terms of the Series 2024 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Second Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Second Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Second Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2024 Bonds. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the “Official Statement,” and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor’s execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Series 2024 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the “Bond Purchase Agreement”), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the “Continuing Disclosure Agreement”), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and

directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2024 Bonds and to effect the execution and delivery of the Second Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2024 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 8. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2024 Bonds.

Section 9. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

City of Fayetteville Staff Review Form

2024-0365

Item ID

8/20/2024

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

Steve Dotson

7/17/2024

CHIEF FINANCIAL OFFICER (110)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Recommend approval of an ordinance authorizing the issuance and sale of the City's not to exceed \$15,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2024, for the purpose of financing all or a portion of the costs of certain street and park facilities and improvements.

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:

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S NOT TO EXCEED \$15,000,000 SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2024, FOR THE PURPOSE OF FINANCING ALL OR A PORTION OF THE COSTS OF CERTAIN STREET AND PARK FACILITIES AND IMPROVEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2024 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has previously determined that there is a need for a source of revenues to finance all or a portion of the costs of critical capital improvement projects, including (1) streets and related improvements (the "Streets Project"), and (2) parks system and related improvements (the "Parks Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance and refinance the costs of various capital improvements such as those comprising the Streets Project and the Parks Project (collectively, the "Projects"), which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to Amendment 62 and the Local Government Bond Act and the provisions of Ordinance No. 6126 of the City, adopted and approved on December 18, 2018 (the "Election Ordinance"), there was submitted to the qualified electors of the City various questions regarding the issuance of an aggregate of not to exceed \$213,865,000 in principal amount of capital improvement bonds for the purpose of financing all or a portion of the costs of the various capital improvements, including the Projects, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of one percent (1.00%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held April 9, 2019, a majority of the qualified electors of the City voting on each of the questions approved the issuance of capital improvement bonds in the principal amounts and for each of the specific purposes set forth on the ballot (and the corresponding levy of the Sales and Use Tax, and the pledge of the receipts thereof to the payment of the bonds); and

WHEREAS, pursuant to Amendment 62 and the Local Government Bond Act, as approved by the qualified electors of the City, and as authorized by Ordinance No. 6194 of the City, adopted and approved on June 4, 2019, the City has previously issued (i) its \$124,425,000 Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), (ii) its \$3,170,000 Sales and Use Tax Capital Improvement Bonds, Taxable Series 2019B (the “Series 2019B Bonds”), and (iii) its \$74,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”);

WHEREAS, the Series 2019B Bonds have been paid in full; and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2024, in the aggregate principal amount of not to exceed \$15,000,000 (the “Series 2024 Bonds”), in order to provide funding for all or a portion of the costs of the Projects; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Series 2024 Bonds to Stephens Inc., Fayetteville, Arkansas (the “Underwriter”), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the “Bond Purchase Agreement”) in substantially the form presented to and before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as “Sales and Use Tax Capital Improvement Bonds, Series 2024” (the “Series 2024 Bonds”). The Series 2024 Bonds shall be issued in the original aggregate principal amount of not to exceed Fifteen Million Dollars (\$15,000,000) and shall mature not later than November 1, 2033, in the principal amounts and bearing interest at the rates to be specified in the Bond Purchase Agreement. The average yield on the Series 2024 Bonds as a whole shall not exceed 5.00% per annum. Of the \$15,000,000 maximum aggregate principal amount of Series 2024 Bonds hereby authorized, (i) not to exceed \$10,105,000 shall be deemed to apply to the Streets Project (Question 2 on the ballot), and (ii) not to exceed \$4,895,000 shall be deemed to apply to the Parks Project (Question 5 on the ballot), and the proceeds of the Series 2024 Bonds shall be allocated accordingly. The proceeds of the Series 2024 Bonds will be utilized to finance all or a portion of the costs of the Projects described above, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2024 Bonds.

The Series 2024 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Second Supplemental Trust Indenture submitted to this meeting. The Mayor is hereby authorized and directed to execute and deliver the Series 2024 Bonds in substantially the form thereof contained in the Second Supplemental Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute

and deliver the Series 2024 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2024 Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas (“Bond Counsel”), in order to complete the Series 2024 Bonds in substantially the form contained in the Second Supplemental Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2024 Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Series 2024 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of an existing one percent (1.00%) Sales and Use Tax levied by the Election Ordinance. Such pledge securing the Series 2024 Bonds shall be made on a parity basis with the existing pledge of such receipts in favor of the Series 2019A Bonds and the Series 2022 Bonds. The levy and collection of the Sales and Use Tax shall continue until such time as the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds are no longer outstanding or sufficient funds are on deposit with the Trustee under the Trust Indenture (defined below) to redeem the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Series 2024 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Second Supplemental Trust Indenture (the “Second Supplemental Trust Indenture”), by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”), and the City Clerk is hereby authorized and directed to execute and acknowledge the Second Supplemental Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Second Supplemental Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Second Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of August 1, 2019, as previously supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, each by and between the City and the Trustee (collectively, the “Original Indenture,” and as further supplemented and amended by the Second Supplemental Trust Indenture, the “Trust Indenture”). The Second Supplemental Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of the Sales and Use Tax receipts and the terms of the Series 2024 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Second Supplemental Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Second Supplemental Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Second Supplemental Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2024 Bonds. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the “Official Statement,” and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor’s execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Series 2024 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the “Bond Purchase Agreement”), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the “Continuing Disclosure Agreement”), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2024 Bonds and to effect the execution and delivery of the Second Supplemental Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Compliance Agreement relating to the tax exemption of interest on the Series 2024 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 8. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Series 2024 Bonds.

Section 9. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 10. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2024.

APPROVED:

ATTEST:

Mayor

City Clerk

(S E A L)

BOND PURCHASE AGREEMENT

September __, 2024

City of Fayetteville
City Administration Building
113 West Mountain
Fayetteville, Arkansas 72701

\$15,000,000

City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024

Ladies and Gentlemen:

On the basis of the representations, warranties and agreements and upon the terms and conditions contained herein, the undersigned, Stephens Inc. (the “Underwriter”), hereby offers to enter into this Bond Purchase Agreement (this “Bond Purchase Agreement”) with the City of Fayetteville, Arkansas (the “City”) which, upon your acceptance of this offer, will be binding upon you and upon the Underwriter. Terms not otherwise defined herein shall have the same meanings as set forth in the Indenture defined and described below.

This offer is made subject to your acceptance of this Bond Purchase Agreement on or before midnight on September __, 2024. The Underwriter may withdraw this offer by written notice to the City at any time prior to its acceptance.

1. **General.** Upon the terms and conditions and in reliance upon the respective representations, warranties and covenants herein, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to sell to the Underwriter, all (but not less than all) of \$15,000,000 City of Fayetteville, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 2024 (the “Series 2024 Bonds”), at the purchase price (the “Purchase Price”) of \$ (the par amount of the Series 2024 Bonds plus a net reoffering premium of \$ and less underwriter’s discount of \$).

The Series 2024 Bonds shall be issued by the City pursuant to the provisions of the Constitution and laws of the State of Arkansas, including, particularly, Amendment 62 to the Constitution and Arkansas Code Annotated (1998 Repl. & Supp. 2023) §§14-164-301 *et seq.* (the “Act”).

The Series 2024 Bonds will constitute special and limited obligations of the City, ratably secured solely by and payable solely from a pledge of and lien on (1) the receipts from a one percent (1.00%) city-wide sales and use tax (the “Sales and Use Tax”) authorized under the Act

and levied within the City pursuant to Ordinance No. 6216 of the City Council of the City which was adopted on December 18, 2018 (the “Election Ordinance”), which levy was approved by the voters of the City at a special election held April 9, 2019, and (2) moneys or investments on deposit in the Revenue Fund, Bond Fund and Redemption Fund established by a Trust Indenture dated as of August 1, 2019, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, and as supplemented and amended by a Second Supplemental Trust Indenture dated as of **October 1, 2024** (as supplemented and amended, the “Indenture”), by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”), all as more particularly described in the Indenture. The pledge of receipts from the Sales and Use Tax is made on a parity basis with the existing pledge of such receipts securing (i) the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), and (ii) the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”).

The Series 2024 Bonds shall be issued and secured pursuant to Ordinance No. of the City Council of the City which was adopted on August , 2024 (the “Authorizing Ordinance”), and pursuant to the Indenture. The Series 2024 Bonds shall have the maturities and interest rates as set forth in Exhibit A hereto. The Series 2024 Bonds shall be subject to redemption as set forth in the Indenture and in the Official Statement (hereinafter defined).

The proceeds of the Series 2024 Bonds will be used (i) to pay all or a portion of the costs of certain street improvements and parks system improvements (collectively, the “2024 Project”), and (ii) to pay certain expenses in connection with the issuance of the Series 2024 Bonds.

The City will undertake, pursuant to a Continuing Disclosure Agreement to be dated as of the date of delivery of the Series 2024 Bonds (the “Continuing Disclosure Agreement”), to provide certain annual financial and operating information and notices of the occurrence of certain listed events, as required by Section (b)(5)(i) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the “Rule”). A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement (each hereinafter defined). **Although certain of its past filings of annual financial and operating information were not made on or before the dates required by the City’s continuing disclosure undertakings, as described in the Official Statement (hereinafter defined),** the City represents that all such filings have now been made through the EMMA system of the Municipal Securities Rulemaking Board and that it has undertaken steps to ensure future compliance with its continuing disclosure undertakings.

In order to ensure compliance with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), applicable to the Series 2024 Bonds, the City will enter into a Tax Compliance Agreement dated as of the date of delivery of the Series 2024 Bonds (the “Tax Compliance Agreement”).

2. Bona Fide Public Offering. The Underwriter agrees to make a bona fide public offering of all of the Series 2024 Bonds at the offering prices set forth on the inside cover of the final Official Statement described below.

3. **Delivery of Official Statement.** (a) The City has previously provided the Underwriter with copies of its Preliminary Official Statement, including the cover page and the appendices thereto, dated [REDACTED], 2024, relating to the Series 2024 Bonds (the “Preliminary Official Statement”). As of its date, the Preliminary Official Statement is “deemed final” by the City for purposes of SEC Rule 15c2-12(b)(1). The Preliminary Official Statement, as amended to conform to the terms of this Bond Purchase Agreement, including Exhibit A hereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the “Official Statement.”

(b) The City agrees to deliver to the Underwriter, at such address as the Underwriter shall specify, as many copies of the final Official Statement dated September [REDACTED], 2024, relating to the Series 2024 Bonds as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of the Rule (as defined above) and with Rule G-32 and Rule G-36 and all other applicable rules of the Municipal Securities Rulemaking Board. The City agrees to deliver such final Official Statement within seven (7) business days after the execution hereof.

(c) Pursuant to the Authorizing Ordinance, the City has authorized and approved the Preliminary Official Statement and the final Official Statement, consented to their distribution and use by the Underwriter and authorized the execution of the final Official Statement by a duly authorized officer of the City. The City hereby ratifies and confirms the use of the Preliminary Official Statement by the Underwriter prior to the date hereof in connection with the public offering of the Series 2024 Bonds.

(d) The Underwriter shall give notice to the City on the date after which no participating underwriter, as such term is defined in the Rule, remains obligated to deliver final Official Statements pursuant to paragraph (b)(4) of the Rule.

4. **City’s Representations and Warranties.** The City represents and warrants to the Underwriter that:

(a) The City is a duly organized and existing political subdivision under the Constitution and laws of the State of Arkansas (the “State”). The City is authorized by the provisions of the Act to issue the Series 2024 Bonds for the purpose of financing a portion of the costs of the 2024 Project.

(b) The City has the full legal right, power and authority (i) to adopt the Election Ordinance levying the Sales and Use Tax, (ii) to adopt the Authorizing Ordinance authorizing the issuance of and sale of the Series 2024 Bonds, (iii) to enter into this Bond Purchase Agreement, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement, (iv) to levy the Sales and Use Tax, (v) to issue, sell and deliver the Series 2024 Bonds to the Underwriter as provided herein, (vi) to pledge irrevocably the receipts of the Sales and Use Tax to the payment of the principal of, premium, if any, and interest on the Series 2024 Bonds, and (vii) to carry out and consummate all other transactions contemplated by each of the

aforesaid documents, and the City has complied with all provisions of applicable law, including the Act, in all matters relating to such transactions.

(c) The City has duly authorized (i) the execution and delivery of the Series 2024 Bonds and the execution, delivery and due performance of this Bond Purchase Agreement, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement, (ii) the distribution and use of the Preliminary Official Statement and the execution, delivery and distribution of the final Official Statement, and (iii) the taking of any and all such actions as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated by such instruments. All consents or approvals necessary to be obtained by the City in connection with the foregoing have been received, and the consents or approvals so received remain still in full force and effect.

(d) The Election Ordinance and the Authorizing Ordinance have been duly adopted by City Council of the City, are each in full force and effect and each constitutes the legal, valid and binding act of the City; and this Bond Purchase Agreement, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement, when executed and delivered, will constitute legal, valid and binding obligations of the City, and this Bond Purchase Agreement, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement are enforceable against the City in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally.

(e) When delivered to or at the direction of the Underwriter, the Series 2024 Bonds will have been duly authorized, executed, authenticated, issued and delivered and will constitute legal, valid and binding obligations of the City in conformity with the laws of the State of Arkansas, including the Act, and will be entitled to the benefit and security of the Authorizing Ordinance and the Indenture.

(f) The City has duly approved and authorized the distribution and use of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement.

(g) The information contained in the Preliminary Official Statement is, and as of the Closing Date such information in the final Official Statement will be, true and correct in all material respects, and the Preliminary Official Statement does not and the final Official Statement will not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) If, at any time prior to the earlier of (i) receipt of notice from the Underwriter pursuant to Section 3(d) hereof that Official Statements are no longer required to be delivered under the Rule or (ii) 25 days after the Closing Date, any event occurs as a result of which the Official Statement, as then amended or supplemented, might include an untrue statement of a material fact, or omit to state any material fact

necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the City shall promptly notify the Underwriter in writing of such event. Any information supplied by the City for inclusion in any amendments or supplements to the Official Statement will not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Upon the request of the Underwriter therefor, the City shall prepare and deliver to the Underwriter, at the City's expense, as many copies of an amendment or supplement to the Official Statement which will correct any untrue statement or omission therein as the Underwriter may reasonably request.

(i) Neither the adoption of the Authorizing Ordinance or the Election Ordinance, the execution and delivery of this Bond Purchase Agreement, the Series 2024 Bonds, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement or the Tax Compliance Agreement, nor the consummation of the transactions contemplated herein or therein or the compliance with the provisions hereof or thereof will conflict with, or constitute on the part of the City a violation of, or a breach of or default under, (i) any statute, indenture, mortgage, commitment, note or other agreement or instrument to which the City is a party or by which it is bound, (ii) any provision of the Constitution of the State of Arkansas, or (iii) any existing law, rule, regulation, ordinance, judgment, order or decree to which the City (or the members of its City Council or any of its officers in their respective capacities as such) is subject. All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, which are required for the City's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Bond Purchase Agreement, the Authorizing Ordinance, the Election Ordinance, the Series 2024 Bonds, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement have been obtained.

(j) Except as is specifically disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best knowledge of the City, threatened, which in any way questions the powers of the City referred to in subparagraph 4(b) above, or the validity of any proceeding taken by the City in connection with the issuance of the Series 2024 Bonds or the levy of the Sales and Use Tax, or wherein an unfavorable decision, ruling or finding could materially adversely affect the transactions contemplated by this Bond Purchase Agreement, or of any other document or instrument required or contemplated by the Series 2024 Bond financing, or which, in any way, could adversely affect the validity or enforceability of the Authorizing Ordinance, the Election Ordinance, the Series 2024 Bonds, the Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement or this Bond Purchase Agreement or, to the knowledge of the City, which in any way questions the exclusion from gross income of the recipients thereof of the interest on the Series 2024 Bonds for federal income tax purposes or in any other way questions the status of the Series 2024 Bonds under federal or State of Arkansas tax laws or regulations.

(k) Any certificate signed by any official of the City and delivered to the Underwriter shall be deemed a representation and warranty by the City to the Underwriter as to the truth of the statements therein contained.

(l) The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

(m) The collection history with respect to the City's Sales and Use Tax set forth in the Preliminary Official Statement under the caption entitled "HISTORICAL SALES AND USE TAX COLLECTIONS" is fair, accurate and complete.

(n) The City will not knowingly take or omit to take any action, which action or omission will in any way cause the proceeds from the sale of the Series 2024 Bonds to be applied in a manner other than as provided in the Indenture, or which would cause the interest on the Series 2024 Bonds to be includable in gross income for federal income tax purposes.

5. **City's Covenants.** The City covenants with the Underwriter as follows:

(a) The City will cooperate with the Underwriter in qualifying the Series 2024 Bonds for offer and sale under the securities or Blue Sky laws of such jurisdictions of the United States as the Underwriter may request; provided, however, that the City shall not be required to consent to suit or to service of process in any jurisdiction. The City consents to the use by the Underwriter in the course of its compliance with the securities or Blue Sky laws of the various jurisdictions of the documents relating to the Series 2024 Bonds, subject to the right of the City to withdraw such consent for cause by written notice to the Underwriter.

(b) Prior to the earlier of (i) receipt of notice from the Underwriter pursuant to Section 3(d) hereof that final Official Statements are no longer required under the Rule or (ii) 25 days after the Closing Date, the City shall provide the Underwriter with such information regarding the City, the receipts from the Sales and Use Tax, and the current financial condition and ongoing operations of the City, all as the Underwriter may reasonably request.

6. **Closing.** At 10:00 a.m. Fayetteville, Arkansas time on **October __**, 2024, or at such other time and/or date as shall have been mutually agreed upon by the City and the Underwriter (the "Closing Date"), the City will deliver the Series 2024 Bonds, or cause the Series 2024 Bonds to be delivered, to or at the direction of the Underwriter, said Series 2024 Bonds to be in definitive form duly executed by the City and authenticated by Simmons Bank, Pine Bluff, Arkansas, as trustee (the "Trustee"), together with the other documents hereinafter mentioned; and the Underwriter will accept such delivery and pay the Purchase Price of the Series 2024 Bonds by making a wire transfer of federal funds payable to the order of the Trustee for the account of the City.

The Series 2024 Bonds shall be delivered to The Depository Trust Company in New York, New York, and the activities relating to the final execution and delivery of the

Authorizing Ordinance, the Election Ordinance, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement and the other documents related to the Series 2024 Bonds and the payment for the Series 2024 Bonds and the delivery of the certificates, opinions and other instruments as described in Section 8 of this Bond Purchase Agreement shall occur in the offices of Kutak Rock LLP, 124 West Capitol Avenue, Suite 2000, Little Rock, Arkansas (“Bond Counsel”), or at such other place as shall have been mutually agreed upon between the City and the Underwriter. The payment for the Series 2024 Bonds and simultaneous delivery of the Series 2024 Bonds to or at the direction of the Underwriter is herein referred to as the “Closing.”

7. **Underwriter’s Right to Cancel.** The Underwriter shall have the right to cancel its obligation to purchase the Series 2024 Bonds hereunder by notifying the City in writing or by telegram of its election to do so between the date hereof and the Closing, if at any time hereafter and prior to the Closing:

(i) the House of Representatives or the Senate of the Congress of the United States, or a committee of either, shall have pending before it, or shall have passed or recommended favorably, legislation introduced previous to the date hereof, which legislation, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon revenues or other income of the general character to be derived by the City or by any similar body under the Election Ordinance, the Authorizing Ordinance or the Indenture or similar documents or upon interest received on obligations of the general character of the Series 2024 Bonds, or of causing interest on obligations of the general character of the Series 2024 Bonds, to be includable in gross income for purposes of federal income taxation, and such legislation, in the Underwriter’s opinion, materially adversely affects the market price of the Series 2024 Bonds; or

(ii) a tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported or rereported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or recommended to the Congress of the United States for passage by the President of the United States, or be enacted or a decision by a federal court of the United States or the United States Tax Court shall have been rendered, or a ruling, release, order, regulation or official statement by or on behalf of the United States Treasury Department, the Internal Revenue Service or other governmental agency shall have been made or proposed to be made having the purpose or effect, or any other action or event shall have occurred which has the purpose or effect, directly or indirectly, of adversely affecting the federal income tax consequences of owning the Series 2024 Bonds or of any of the transactions contemplated in connection herewith, including causing interest on the Series 2024 Bonds to be included in gross income for purposes of federal income taxation, or imposing federal income taxation upon revenues or other income of the general character to be derived by the City or by any similar body under the Election Ordinance, the Authorizing Ordinance or the Indenture or similar documents or upon interest received on obligations of the general character of the Series 2024 Bonds, or the Series 2024 Bonds which, in the opinion of the Underwriter, materially adversely affects the market price of or market for the Series 2024 Bonds; or

(iii) legislation shall have been enacted, or actively considered for enactment with an effective date prior to the Closing, or a decision by a court of the United States shall have been rendered, the effect of which is that the Series 2024 Bonds, including any underlying obligations, or the Indenture, as the case may be, is not exempt from the registration, qualification or other requirements of the Securities Exchange Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(iv) a stop order, ruling, regulation or official statement by the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall have been issued or made or any other event occurs, the effect of which is that the issuance, offering or sale of the Series 2024 Bonds, including any underlying obligations, or the execution and delivery of the Indenture as contemplated hereby or by the Official Statement, is or would be in violation of any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(v) any event shall have occurred or any information shall have become known to the Underwriter which causes the Underwriter to reasonably believe that the Official Statement as then amended or supplemented includes an untrue statement of a material fact, or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; or

(vi) there shall have occurred any outbreak of hostilities or any national or international calamity or crisis, including a financial crisis, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Underwriter, would materially adversely affect the market for or market price of the Series 2024 Bonds; or

(vii) there shall be in force a general suspension of trading on the New York Stock Exchange, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Underwriter, would materially adversely affect the market for or market price of the Series 2024 Bonds; or

(viii) a general banking moratorium shall have been declared by federal, New York or State authorities; or

(ix) any proceeding shall be pending or threatened by the Securities and Exchange Commission against the City; or

(x) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; or

(xi) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Series 2024 Bonds or obligations of the general character of the Series 2024 Bonds, any material restrictions not now in force, or

increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of the Underwriter.

8. **Conditions to Underwriter's Obligations.** The obligation of the Underwriter to purchase the Series 2024 Bonds shall be subject (a) to the performance by the City of its obligations to be performed hereunder at and prior to the Closing, (b) to the accuracy of the representations and warranties of the City herein as of the date hereof and as of the time of the Closing, and (c) to the following conditions, including the delivery by the City of such documents as are enumerated herein in form and substance satisfactory to the Underwriter:

(a) The Series 2024 Bonds shall have been duly authorized, executed and delivered in the forms approved by the City in the Indenture with only such changes therein as the Underwriter and the City shall mutually agree upon, which shall in all instances be as described in the final Official Statement;

(b) At the time of Closing, (i) the Official Statement, this Bond Purchase Agreement, the Second Supplemental Trust Indenture, the Authorizing Ordinance, the Election Ordinance, the Continuing Disclosure Agreement and the Tax Compliance Agreement shall be in full force and effect and shall not have been amended, modified or supplemented from the date hereof, except as may have been agreed to in writing by the Underwriter, (ii) the proceeds of the sale of the Series 2024 Bonds and other funds shall be deposited and applied as described in the Second Supplemental Trust Indenture, (iii) no default or event of default under the Indenture shall have occurred and be continuing, and (iv) no material adverse change affecting the City or the Sales and Use Tax shall have occurred, nor shall any development involving a prospective and material adverse change in, or affecting the business, financial condition, results of operations, prospects or properties of the City have occurred;

(c) Receipt of fully executed originals of the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement at or prior to the Closing;

(d) At or prior to the Closing, the Underwriter shall receive the following documents in such number of counterparts as shall be mutually agreeable to the Underwriter and Bond Counsel:

(1) A final approving opinion of Bond Counsel, dated the Closing Date, in substantially the form set forth in Exhibit C hereto;

(2) A supplemental opinion of Bond Counsel, addressed to the City, the Trustee and the Underwriter and dated the Closing Date, in substantially the form set forth in Exhibit D hereto;

(3) The Official Statement executed by a duly authorized officer of the City;

(4) Certified copies of the Authorizing Ordinance and the Election Ordinance and all other ordinances and resolutions of the City relating to the Series 2024 Bonds;

(5) Certified copies of the Notice of Election and Mayor's Proclamation of Election Results, together with proofs of publication thereof;

(6) Photocopies of the Series 2024 Bonds as executed and delivered;

(7) A letter from S&P Global Ratings, a business unit of Standard & Poor's Financial Services, LLC, to the effect that the Series 2024 Bonds have been assigned a rating of no less than "AA-" (stable outlook), which rating shall be in effect as of the Closing Date;

(8) A certificate, in form and substance satisfactory to the Underwriter, of any duly authorized officer or official of the City satisfactory to the Underwriter, dated as of the Closing Date, to the effect that: (i) each of the City's representations, warranties and covenants contained herein are true and correct as of the Closing Date; (ii) the City has duly adopted the Authorizing Ordinance and the Election Ordinance by all action necessary under the Act and the laws and Constitution of the State of Arkansas, and has duly authorized the execution, delivery and due performance of the Series 2024 Bonds, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement, the Official Statement and this Bond Purchase Agreement; (iii) no litigation is pending, or to the knowledge of the officer or official of the City signing the certificate after due investigation and inquiry, threatened, to restrain or enjoin the issuance or sale of the Series 2024 Bonds or in any way affecting any authority for or the validity of the Series 2024 Bonds, the Sales and Use Tax, the Official Statement, the Authorizing Ordinance, the Election Ordinance, the Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement, or this Bond Purchase Agreement; (iv) the Series 2024 Bonds, the Second Supplemental Trust Indenture, this Bond Purchase Agreement, the Continuing Disclosure Agreement and the Tax Compliance Agreement, as executed and delivered by the City, are in the form or in substantially the form approved for such execution by appropriate proceedings of the City; (v) since December 31, 2023, there has not been any material adverse change in the financial condition or results of operations of the City whether or not arising in the ordinary course of business, other than as set forth in the Official Statement; (vi) neither the Authorizing Ordinance nor the Election Ordinance have been amended, modified or repealed as of the Closing Date, and the Authorizing Ordinance and the Election Ordinance remain in full force and effect; (vii) none of the proceedings of the City taken preliminary to the issuance of the Series 2024 Bonds, as certified in such certificate, including the levy of the Sales and Use Tax, have been in any manner repealed, amended or changed; (viii) the City has complied in all respects with the provisions of the Act and has full legal right, power and authority to levy the Sales and Use Tax and to issue the Series 2024 Bonds for the purposes stated in the Act and to enter into this Bond Purchase

Agreement, to adopt the Authorizing Ordinance and the Election Ordinance, to issue, sell and deliver the Series 2024 Bonds as provided in this Bond Purchase Agreement, and to carry out and consummate all other transactions contemplated by this Bond Purchase Agreement, the Authorizing Ordinance, the Election Ordinance, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement and the Tax Compliance Agreement; (ix) neither the Official Statement nor any amendment or supplement thereto contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and (x) to the best knowledge of the officer or official of the City signing the certificate, no event affecting the City or the Sales and Use Tax has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is used that is necessary to disclose therein in order to make the statements and information therein not misleading in any respect;

(9) An opinion of Kit Williams, Esq., City Attorney, dated the Closing Date and addressed to the Underwriter, Bond Counsel and the Trustee, to the effect that (i) the City is a duly organized and validly existing political subdivision and city of the first class, organized under the laws of the State of Arkansas, with full power and authority to adopt the Authorizing Ordinance and Election Ordinance, to levy the Sales and Use Tax, and to execute and deliver the Series 2024 Bonds, the Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement and this Bond Purchase Agreement; (ii) the City has duly approved the Preliminary Official Statement and the Official Statement; (iii) the Authorizing Ordinance and the Election Ordinance have been duly adopted by the City by all action necessary under the Act and the laws and Constitution of the State of Arkansas, and each remains in full force and effect; (iv) the Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement and this Bond Purchase Agreement have been duly authorized, approved, executed and delivered by the City and, subject to the extent that the enforceability of the rights and remedies set forth therein may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally, constitute valid and binding agreements of the City enforceable in accordance with their terms; (v) the information in the Official Statement under the captions "THE PROJECTS," "THE CITY" and "LEGAL MATTERS" (apart from financial or statistical data contained or incorporated therein, as to which no view need be expressed) is fair, accurate and complete and does not omit any matter which, in such counsel's opinion, for the purposes for which the Official Statement is to be used, should be included or referred to therein; (vi) excepting those matters discussed in the Official Statement, there is no action, suit or proceeding at law or in equity before or by any court, public board or body, pending or threatened, against or affecting the City, challenging the validity of the transactions contemplated by the Official Statement or the validity of the Series 2024 Bonds, the Sales and Use Tax, the Authorizing Ordinance, the Election Ordinance, the Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement or this Bond Purchase Agreement and, to the best of such counsel's knowledge, there is no investigation,

pending or threatened, and no threatened action, suit or proceeding involving any of the matters hereinabove mentioned in this clause (vi); (vii) the execution and delivery of the Authorizing Ordinance, the Election Ordinance, the Second Supplemental Trust Indenture, the Continuing Disclosure Agreement, the Tax Compliance Agreement and this Bond Purchase Agreement, and compliance with the provisions hereof and thereof, under the circumstances contemplated hereby and thereby, do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or any existing law, regulation, court order or consent decree to which the City is subject; and (viii) based upon the examinations which such counsel has made as counsel to the City, which shall be specified, nothing has come to such counsel's attention which would lead such counsel to believe that the Official Statement (except for the financial statements and other financial data included in the Official Statement, as to which no view need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(10) Evidence that Federal Form 8038-G has been executed by the City and is ready for filing with the Internal Revenue Service;

(11) Evidence that, except as disclosed in the Official Statement, all necessary approvals, whether legal or administrative, have been obtained from applicable federal, state and local entities and agencies; and

(12) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter and Bond Counsel may reasonably request to evidence compliance by the City with legal requirements, the truth and accuracy, as of the time of Closing, of the representations of the City herein contained and the due performance or satisfaction by the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

If the City shall be unable to satisfy the conditions to the obligations of the Underwriter contained in this Bond Purchase Agreement, or if the obligation of the Underwriter to purchase and accept delivery of the Series 2024 Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and neither the Underwriter nor the City shall be under further obligation hereunder; except that the respective obligations to pay expenses, as provided in Section 12 hereof, shall continue in full force and effect.

9. **Conditions to Obligations of the City.** The obligations of the City hereunder are subject to the performance by the Underwriter of its obligations hereunder.

10. **Survival.** All representations, warranties and agreements of the City shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of

the Underwriter, and shall survive the Closing. The obligations of the City under Sections 11 or 12 hereof shall survive any termination of this Bond Purchase Agreement by the Underwriter pursuant to the terms hereof.

11. Indemnification. The City, to the extent permitted by law, agrees to indemnify and hold harmless the Underwriter, each member, officer, director, partner or employee of the Underwriter and each person who controls the Underwriter within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively called the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses (including any legal or other expenses incurred by an Indemnified Party in connection with investigating any claims against an Indemnified Party and defending any actions) whatsoever caused by any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading insofar as such losses, claims, damages, liabilities or expenses are caused by any such untrue or misleading statement or omission or alleged untrue or misleading statement or omission in the information contained in the Official Statement; provided, however, that the City shall not be liable to an Indemnified Party in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in any of such documents in reliance upon and in conformity with written information furnished to the City by the Underwriter specifically for use therein. No Indemnified Parties shall be indemnified hereunder for any losses, claims, damages or liabilities resulting from the negligence or misconduct of such Indemnified Parties.

In case any action shall be brought against one or more of the Indemnified Parties based upon the Official Statement and in respect of which indemnity may be sought against the City, the Indemnified Parties shall promptly notify the City in writing, and, to the extent permitted by law, the City shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless employment of such counsel has been specifically authorized by the City. The City shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the City, the City agrees to indemnify and hold harmless the Indemnified Parties to the extent provided in this Bond Purchase Agreement and to the extent permitted by law.

12. Payment of Expenses. The City will pay or cause to be paid all reasonable expenses incident to the performance of its obligations under this Bond Purchase Agreement, including, but not limited to, expenses of mailing or delivery of the Series 2024 Bonds, legal publication costs, costs for obtaining CUSIP numbers on the Series 2024 Bonds, fees payable to The Depository Trust Company relating to the Series 2024 Bonds, Federal Funds charges, costs of printing the Series 2024 Bonds, the Preliminary and final Official Statements, or any amendment or supplement to the Preliminary or final Official Statement, fees and disbursements of Bond Counsel, accountants’ fees and expenses, any fees charged by investment rating

agencies for the rating of the Series 2024 Bonds, bond insurance premiums, if any, fees of the Trustee and any paying agent fees, and any fees and disbursements in connection with the qualification of the Series 2024 Bonds for sale under the securities or “Blue Sky” laws of the various jurisdictions and the preparation of “Blue Sky” memoranda. In the event this Bond Purchase Agreement shall terminate because of the default of the Underwriter, the City will, nevertheless, pay, or cause to be paid, all of the expenses specified above. The Underwriter shall pay all advertising expenses in connection with the public offering of the Series 2024 Bonds, and all other expenses incurred by it in connection with the public offering and distribution of the Series 2024 Bonds, including the fees and expenses of any counsel retained by the Underwriter. If the City defaults under this Bond Purchase Agreement, the Underwriter may bring whatever legal action it may have against the City to recover damages, if any, incurred by the Underwriter.

13. Establishment of Issue Price. (a) The Underwriter agrees to assist the City in establishing the issue price of the Series 2024 Bonds and shall execute and deliver to the City at Closing an “issue price” or similar certificate, together with supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2024 Bonds.

(b) Except as otherwise set forth in Exhibit A attached hereto, the City will treat the first price at which 10% of each maturity of the Series 2024 Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the City the price or prices at which the Underwriter has sold to the public each maturity of the Series 2024 Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Series 2024 Bonds, the Underwriter agrees to promptly report to the City the prices at which Series 2024 Bonds of that maturity have been sold by the Underwriter to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) all the Series 2024 Bonds of that maturity have been sold or (ii) the 10% test has been satisfied as to the Series 2024 Bonds of that maturity, provided that, the Underwriter’s reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, the City or Bond Counsel.

[Subsection (c) below shall apply only if the Underwriter agrees to apply the hold-the-offering-price rule, as described below.]

[(c) The Underwriter confirms it has offered the Series 2024 Bonds to the public on or before the date of this Bond Purchase Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Exhibit A attached hereto, except as otherwise set forth therein. Exhibit A also sets forth, as of the date of this Bond Purchase Agreement, the maturities, if any, of the Series 2024 Bonds for which the 10% test has not been satisfied and for which the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any

maturity of the Series 2024 Bonds, the Underwriter will neither offer nor sell unsold Series 2024 Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the date of the earlier of the following:

- (1) the close of business on the fifth (5th) business day after the sale date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2024 Bonds to the public at a price that is no higher than the initial offering price to the public.

Upon the written request of the City, the Underwriter shall advise the City promptly after the close of the fifth (5th) business day after the sale date whether the Underwriter has sold 10% of that maturity of the Series 2024 Bonds to the public at a price that is no higher than the initial offering price to the public.]

(d) The Underwriter confirms that:

(i) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which Underwriter is a party) relating to the initial sale of the Series 2024 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A)(i) to report the prices at which it sells to the public the unsold Series 2024 Bonds of each maturity allotted to it, whether or not the Closing Date has occurred, until either all Series 2024 Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Series 2024 Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter and as set forth in the related pricing wires; and

(B) to promptly notify the Underwriter of any sales of the Series 2024 Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Series 2024 Bonds to the public (each such term being used as defined below); and

(C) to acknowledge that, unless otherwise advised by the underwriter, dealer or broker-dealer, the Underwriter shall assume that each order submitted by the underwriter, dealer or broker-dealer is a sale to the public.

(ii) any agreement among underwriters or selling group agreement relating to the initial sale of the Series 2024 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial

sale of the Series 2024 Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2024 Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all the Series 2024 Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or such underwriter or dealer that the 10% test has been satisfied as to the Series 2024 Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or such underwriter or dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the underwriter or the dealer and as set forth in the related pricing wires.

(e) The City acknowledges that, in making the representation set forth in this Section, the Underwriter will rely on (i) the agreement of each underwriter to comply with the requirements for establishing issue price of the Series 2024 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2024 Bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Series 2024 Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2024 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2024 Bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an underwriter or dealer who is a member of a selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Series 2024 Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2024 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2024 Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The City further acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing issue price of the Series 2024 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2024 Bonds, and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2024 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2024 Bonds.

(f) The Underwriter acknowledges that sales of any Series 2024 Bonds to any person that is a related party to an underwriter participating in the initial sale of the Series 2024 Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this Section 13. Further, for purposes of this Section 13:

(i) “maturity” means Series 2024 Bonds with the same credit and payment terms. Series 2024 Bonds with different maturity dates, or Series 2024 Bonds with the same maturity date but different stated interest rates, are treated as separate maturities;

(ii) “public” means any person other than an underwriter or a related party;

(iii) “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2024 Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2024 Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2024 Bonds to the public);

(iv) a purchaser of any of the Series 2024 Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of the other), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profits interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one party of the other); and

(v) “sale date” means the date of execution of this Bond Purchase Agreement by all parties.

Section 14. Arm’s Length Transaction. The City acknowledges and agrees that (i) the purchase and sale of the Series 2024 Bonds pursuant to this Bond Purchase Agreement is an arm’s length commercial transaction between the City and the Underwriter; in connection with such transaction, including the process leading thereto, the Underwriter is acting solely as principal hereunder and not as an agent of or fiduciary to the City; (iii) the Underwriter has neither assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering of the Series 2024 Bonds or the process leading thereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the City on other matters), nor has it assumed any other obligation to the City except the obligations expressly set forth in this Bond Purchase Agreement; (iv) the Underwriter has financial and other interests that differ from those of the City; and (v) the City has consulted its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Series 2024 Bonds.

15. **Notices.** Any notice or other communication to be given to the City under this Bond Purchase Agreement may be given by delivering the same in writing to the Mayor at the address set forth above, and any notice or other communication to be given to the Underwriter under this Bond Purchase Agreement may be given by delivering the same in writing to Stephens Inc., 111 Center Street, Little Rock, AR 72201, Attention: Ms. Leigh Ann Biernat.

16. **Nonassignability.** This Bond Purchase Agreement is made solely for the benefit of the City and the Underwriter (including any successor or assign of the Underwriter), and no other person, including any purchaser of the Series 2024 Bonds, shall acquire or have any right hereunder or by virtue hereof.

17. **Applicable Law.** This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.

18. **Counterparts.** This Bond Purchase Agreement shall become effective upon your acceptance hereof and may be executed in counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

Very truly yours,

STEPHENS INC.

By: _____
Authorized Representative

Accepted and agreed to as of
the date first above written:

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Title: Mayor

EXHIBIT A **MATURITY SCHEDULE**

(November 1) Maturity	Principal Amount⁽¹⁾	Interest Rate	Yield	Price
2025	\$	%	%	%
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				

(1) All maturities are General Rule maturities.

(2) Mandatory sinking fund redemption.

EXHIBIT B

FORM OF ISSUE PRICE CERTIFICATE

\$15,000,000

**City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024**

The undersigned, as representative of Stephens Inc., as underwriter (the “Purchaser”) of the above-captioned bonds (the “Bonds”), hereby certifies as set forth below with respect to the sale and issuance of the Bonds.

1. ***Sale of the Bonds.*** As of the date of this Certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule 1.

2. ***Defined Terms.***

(a) *Issuer* means the City of Fayetteville, Arkansas.

(b) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(c) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party (as such terms are defined below) to an Underwriter.

(d) A purchaser of any of the Bonds is a *Related Party* to any Underwriter if the Underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(e) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this Certificate are limited to factual matters only. Nothing in this Certificate represents the Purchaser’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax

Compliance Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Kutak Rock LLP, Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

STEPHENS INC.

By: _____
Title:

Dated: October __, 2024

SCHEDULE 1
SALE PRICES OF THE GENERAL RULE MATURITIES AND
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES

\$15,000,000
City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024

(November 1) Maturity	Principal Amount⁽¹⁾	Interest Rate	Yield	Price
2026	\$	%	%	%
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				

(1) All maturities are General Rule maturities.

(2) Mandatory sinking fund redemption.

SCHEDULE 2
PRICING WIRE OR EQUIVALENT COMMUNICATION
(To be attached)

EXHIBIT C

PROPOSED FORM OF BOND COUNSEL APPROVING OPINION

Upon delivery of the Series 2024 Bonds in definitive form, Kutak Rock LLP, Little Rock, Arkansas, proposes to deliver its approving opinion in substantially the following form:

_____, 2024

City of Fayetteville, Arkansas
Fayetteville, Arkansas

Simmons Bank, as Trustee
Pine Bluff, Arkansas

Stephens Inc.
Little Rock, Arkansas

\$15,000,000

City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance and sale by the City of Fayetteville, Arkansas (the “City”), a political subdivision of the State of Arkansas, of its **\$15,000,000** Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2024 (the “Series 2024 Bonds”).

The Series 2024 Bonds are being issued pursuant to the provisions of the Constitution and laws of the State of Arkansas, including, particularly, Amendment 62 and Arkansas Code Annotated (1998 Repl. & Supp. 2023) §§14-164-301 *et seq.* (as from time to time amended, the “Local Government Bond Act”), pursuant to Ordinance No. _____ of the City, duly adopted and approved on **August __**, 2024 (the “Authorizing Ordinance”), and pursuant to a Trust Indenture dated as of August 1, 2019, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, and as supplemented and amended by a Second Supplemental Trust Indenture dated as of **October 1**, 2024 (as supplemented and amended, the “Indenture”), by and between the City and Simmons Bank, as trustee (the “Trustee”). Reference is hereby made to the Indenture and to all indentures supplemental thereto for the provisions, among others, with respect to the conditions for the issuance of parity indebtedness by the City, with respect to the nature and extent of the security for the Series 2024 Bonds, the rights, duties and obligations of the City, the Trustee and the Holders of the Series 2024 Bonds, and the terms upon which the Series 2024 Bonds are issued and secured.

At a special election held April 9, 2019, called in accordance with the Local Government Bond Act pursuant to Ordinance No. 6216 of the City, adopted on December 18, 2018 (the “Election Ordinance”), the issuance of capital improvement bonds secured by the Sales and Use Tax (as defined in the Indenture) was approved by a majority of the qualified electors of the City voting on each of the ten questions set forth on the ballot in the respective principal amounts and for the specified purposes therein described.

Reference is made to an opinion of even date herewith of Kit Williams, Esq., City Attorney, a copy of which is on file with the Trustee, with respect, among other matters, to the status and valid existence of the City, the power of the City to adopt the Election Ordinance and the Authorizing Ordinance and to enter into and perform its obligations under the Indenture, the valid adoption of the Election Ordinance and the Authorizing Ordinance, and the due authorization, execution and delivery of the Indenture by the City, and with respect to the Indenture being enforceable upon the City.

We have examined the law and such certified proceedings and other papers as we have deemed necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon the representations of the City contained in the Election Ordinance, the Authorizing Ordinance and the Indenture and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The City is duly created and validly existing as a municipal corporation of the State of Arkansas. Pursuant to the Constitution and laws of the State of Arkansas, including, particularly, Amendment 62 and the Local Government Bond Act, the City is empowered to adopt the Election Ordinance and the Authorizing Ordinance, to execute and deliver the Indenture, to perform the agreements on its part contained therein, and to issue the Series 2024 Bonds.
2. The Authorizing Ordinance has been duly adopted by the City and constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms.
3. The Indenture has been duly authorized, executed and delivered by the City and is a valid and binding obligation of the City enforceable upon the City in accordance with its terms.
4. The Series 2024 Bonds have been duly authorized, executed and delivered by the City and are valid and binding limited obligations of the City payable from and secured by a valid lien on and pledge of the Trust Estate (as defined in the Indenture), including receipts of the Sales and Use Tax (as defined in the Indenture), in the manner and to the extent provided in the Indenture. Such lien and pledge are made on a parity basis with the existing lien and pledge of the Trust Estate securing (i) the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A, and (ii) the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022. The City is duly authorized to pledge such Trust Estate, and no further action on the part of the City or any other party is required to perfect the same or the interest of the owners of the Series 2024 Bonds therein.

5. The Sales and Use Tax has been validly adopted in accordance with the Constitution and laws of the State of Arkansas, including Amendment 62 and the Local Government Bond Act, and may be validly pledged to secure the Series 2024 Bonds.

6. Interest on the Series 2024 Bonds (including any original issue discount properly allocable to the owner of a Series 2024 Bond) is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals. The opinions described in the preceding sentence assume the accuracy of certain representations and compliance by the City with covenants designed to satisfy the requirements of the Internal Revenue Code of 1986, as amended (the “Code”), that must be met subsequent to the issuance of the Series 2024 Bonds. Failure to comply with such requirements could cause interest on the Series 2024 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2024 Bonds. The City has covenanted to comply with such requirements. We express no opinion regarding other federal tax consequences arising with respect to the Series 2024 Bonds.

7. The interest on the Series 2024 Bonds is exempt from all state, county and municipal taxes in the State of Arkansas.

8. The Series 2024 Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended, in connection with the offer and sale of the Series 2024 Bonds.

It is to be understood that the rights of the registered owners of the Series 2024 Bonds and the enforceability of the Series 2024 Bonds, the Authorizing Ordinance and the Indenture may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

EXHIBIT D

PROPOSED FORM OF BOND COUNSEL SUPPLEMENTAL OPINION

_____, 2024

City of Fayetteville, Arkansas
Fayetteville, Arkansas

Simmons Bank, as Trustee
Pine Bluff, Arkansas

Stephens Inc.
Little Rock, Arkansas

\$15,000,000

City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024

Ladies and Gentlemen:

This opinion supplements our bond approving opinion, dated the date hereof, relating to the above-captioned bonds (the “Series 2024 Bonds”). Except as otherwise defined herein, the terms used herein shall have the meanings prescribed for them in said opinion.

We have examined the law and such certified proceedings and other papers as we have deemed necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon the representations of the City contained in the Indenture and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

In addition to the documents specifically mentioned in the approving opinion, in connection with this opinion we have also examined:

(a) An executed counterpart of the Bond Purchase Agreement dated **September __**, 2024 (the “Bond Purchase Agreement”), by and between the City and Stephens Inc., as underwriter (the “Underwriter”);

(b) An executed counterpart of the Continuing Disclosure Agreement dated **October __**, 2024 (the “Disclosure Agreement”), by and between the City and Simmons Bank, as dissemination agent (the “Dissemination Agent”);

(c) An executed counterpart of the Tax Compliance Agreement dated **October __**, 2024 (the “Tax Compliance Agreement”), by and between the City and the Trustee;
and

(d) The Official Statement dated September __, 2024, with respect to the Series 2024 Bonds (the “Official Statement”).

Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows:

1. The Bond Purchase Agreement has been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Underwriter, the Bond Purchase Agreement constitutes the valid and binding agreement of the City enforceable in accordance with its terms.

2. The Disclosure Agreement has been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Dissemination Agent, the Disclosure Agreement constitutes the valid and binding agreement of the City enforceable in accordance with its terms.

3. The Tax Compliance Agreement has been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the Trustee, the Tax Compliance Agreement constitutes the valid and binding agreement of the City enforceable in accordance with its terms.

4. To the best of our knowledge, there is no litigation or other proceeding pending or threatened in any court, agency or other administrative body (either State or Federal) which could have a material adverse effect on (a) the financial condition of the City, (b) the ability of the City to perform its obligations under the Authorizing Ordinance, the Indenture, the Bond Purchase Agreement, the Disclosure Agreement or the Tax Compliance Agreement (collectively, the “Related Documents”), (c) the security for the Series 2024 Bonds, or (d) the transactions contemplated by the Related Documents.

5. Nothing has come to our attention which would cause us to believe that, as of the date hereof, the Official Statement (excluding financial and statistical data and information which is contained or incorporated in the Official Statement, as to which no view is expressed) contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The enforceability of the respective obligations of the parties to the documents and other items described above, and the availability of certain rights and remedies provided for therein, may be limited by bankruptcy, receivership, insolvency, reorganization, moratorium, marshalling or other similar statutes or rules of law affecting creditors' rights and remedies, to general principles of equity and to the discretion of any court in granting any relief or issuing any order, whether the proceeding is considered a proceeding at law or equity. In particular, the right to indemnification under any of the documents or other items described above may be limited by federal or state securities laws or by the public policy underlying such laws.

This opinion is being rendered to you solely for your use and benefit and may not be relied upon in any manner, nor used, by any other person.

Very truly yours,

PRELIMINARY OFFICIAL STATEMENT DATED SEPTEMBER __, 2024

NEW ISSUE
BOOK-ENTRY ONLY

*RATING: S&P “ ” () outlook)

In the opinion of Kutak Rock LLP, Bond Counsel, under existing laws, regulations, rulings and judicial decisions and assuming the accuracy of certain representations and continuing compliance with certain covenants, interest on the Series 2024 Bonds (including any original issue discount properly allocable to the owner of a Series 2024 Bond) is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals. Interest on the Series 2024 Bonds may affect the federal alternative minimum tax imposed on certain corporations. Under existing laws, regulations, rulings and judicial decisions, Bond Counsel is of the opinion that the Series 2024 Bonds and the interest thereon are exempt from all state, county and municipal taxes in the State of Arkansas. For a more complete description, see the caption “TAX MATTERS” herein.

\$15,000,000**
CITY OF FAYETTEVILLE, ARKANSAS
SALES AND USE TAX CAPITAL IMPROVEMENT BONDS
SERIES 2024

Dated: Date of Delivery

Due: November 1, as shown on inside front cover

The Sales and Use Tax Capital Improvement Bonds, Series 2024 (the “Series 2024 Bonds”), are being issued by the City of Fayetteville, Arkansas (the “City”) for the purpose of (i) financing a portion of the costs of various capital improvements in the City, and (ii) paying certain expenses in connection with the issuance of the Series 2024 Bonds. See the captions “ESTIMATED SOURCES AND USES OF FUNDS” and “THE PROJECTS” herein.

The Series 2024 Bonds are issuable only as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, to which principal, premium, if any, and interest payments on the Series 2024 Bonds will be made so long as Cede & Co. is the registered owner of the Series 2024 Bonds. Individual purchases of the Series 2024 Bonds will be made only in book-entry form, in denominations of \$5,000 or integral multiples thereof. Individual purchasers (“Beneficial Owners”) of Series 2024 Bonds will not receive physical delivery of bond certificates. See the caption “BOOK-ENTRY ONLY SYSTEM” herein.

The Series 2024 Bonds shall bear interest from the date of their delivery, payable on May 1 and November 1 of each year, commencing **May 1, 2025**. All such interest payments shall be payable to the persons in whose name such Series 2024 Bonds are registered on the bond registration books maintained by Simmons Bank, Pine Bluff, Arkansas as trustee (the “Trustee”), as of the fifteenth day of the calendar month preceding the calendar month in which the applicable interest payment date falls. Principal of and premium, if any, on the Series 2024 Bonds shall be payable at the principal corporate trust office of the Trustee. So long as DTC or its nominee is the registered owner of the Series 2024 Bonds, disbursement of such payments to DTC Participants is the responsibility of DTC, and the disbursement of such payments to Beneficial Owners is the responsibility of DTC Participants or Indirect Participants, as more fully described herein.

Pursuant to a Trust Indenture dated as of August 1, 2019, as supplemented and amended by First Supplemental Trust Indenture dated as of June 1, 2022, and by a Second Supplemental Trust Indenture dated as of October 1, 2024 (as supplemented and amended, the “Indenture”), between the City and the Trustee, the payment of the principal of, premium, if any, and interest on the Series 2024 Bonds is secured by a pledge of the receipts from a one percent (1.00%) city-wide sales and use tax (the “Sales and Use Tax”). Such pledge is made on a parity basis with the existing pledge of receipts of the Sale and Use Tax securing (i) \$24,620,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), and (ii) \$68,440,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”). See the caption “SECURITY FOR THE BONDS” herein. The Series 2024 Bonds are subject to mandatory redemption prior to maturity as more fully described herein under the caption “THE SERIES 2024 BONDS - Redemption.”

The Series 2024 Bonds are special obligations of the City secured by and payable solely from receipts of the Sales and Use Tax. The Series 2024 Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction. The issuance of the Series 2024 Bonds shall not directly, indirectly or contingently obligate the City to levy or pledge any taxes whatsoever or to make any appropriation for the payment of the Series 2024 Bonds, except as described herein with respect to the Sales and Use Tax.

The Series 2024 Bonds are offered when, as and if issued by the City and are subject to the final approving opinion of Kutak Rock LLP, Little Rock, Arkansas, Bond Counsel. Certain matters will be passed upon for the City by its counsel, Kit Williams, Esq., City Attorney. It is expected that the Series 2024 Bonds will be available for delivery in New York, New York, on or about October 15, 2024.

Stephens Inc.

The date of this Official Statement is September __, 2024.

* See the caption “RATING” herein.

** Preliminary; subject to change.

MATURITY SCHEDULE*

<u>Maturity (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP**</u>
2025	\$	%	%	
2026				
2027				
2028				
2029				
2030				
2031				
2032				

\$ _____ % Terms Bonds due November 1, 20____ – Yield _____ % CUSIP: _____ **

* Preliminary; subject to change.

** CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed on behalf of the American Bankers Association by FactSet Research Systems Inc. This data is not intended to create a database and does not serve in any way as a substitute for CUSIP Global Services. CUSIP numbers have been assigned by an independent company not affiliated with the City and are included solely for the convenience of the registered owners of the Series 2024 Bonds. The City and the Underwriter are not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness by the City on the Series 2024 Bonds and by the Underwriter on the Series 2024 Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2024 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series 2024 Bonds.

CITY OF FAYETTEVILLE, ARKANSAS

Issuer

City Council

Lioneld Jordan, Mayor

Scott Berna

Sarah Bunch

Holly Hertzberg

D'Andre Jones

Sarah Moore

Robert Stafford

Teresa Turk

Mike Wiederkehr

Paul Becker, Finance Director

Kara Paxton, City Clerk

Kit Williams, City Attorney

SIMMONS BANK

Pine Bluff, Arkansas

Trustee and Paying Agent

KUTAK ROCK LLP

Little Rock, Arkansas

Bond Counsel

STEPHENS INC.

Fayetteville, Arkansas

Underwriter

No dealer, broker, salesman or other person has been authorized by the City or by Stephens Inc. (the “Underwriter”) to give any information or to make any representations, other than those contained herein; and, if given or made, such other information or representations must not be relied upon as having been authorized by either of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of any Series 2024 Bonds in any jurisdiction in which such offer is not authorized, or in which the person making such offer, solicitation or sale is not qualified to do so, or to any person to whom it is unlawful to make such offer, solicitation or sale. The information and expressions of opinion contained herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date hereof.

THE SERIES 2024 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE TRUST INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON CERTAIN EXEMPTIONS FROM SUCH REGISTRATION AND QUALIFICATION CONTAINED IN SUCH LAWS.

CERTAIN INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM THE CITY, THE DEPOSITORY TRUST COMPANY AND OTHER SOURCES WHICH ARE BELIEVED TO BE RELIABLE. THE UNDERWRITER HAS REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND AS PART OF, ITS RESPONSIBILITIES TO INVESTORS UNDER THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION, BUT THE UNDERWRITER DOES NOT GUARANTY THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2024 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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OFFICIAL STATEMENT

\$15,000,000*

**CITY OF FAYETTEVILLE, ARKANSAS
SALES AND USE TAX CAPITAL IMPROVEMENT BONDS
SERIES 2024**

INTRODUCTORY STATEMENT

The following introductory statement is subject in all respects to the more complete information set forth in this Official Statement. All descriptions and summaries of documents hereinafter set forth are qualified in their entirety by reference to each such document. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in “Appendix B -- DEFINITIONS OF CERTAIN TERMS”.

This Official Statement, including the cover page and the Appendices hereto, is furnished in connection with the offering by the City of Fayetteville, Arkansas (the “City”) of its Sales and Use Tax Capital Improvement Bonds, Series 2024, in the principal amount of \$15,000,000* (the “Series 2024 Bonds”).

The City is a city of the first class organized and existing under the laws of the State of Arkansas (the “State”). The City is authorized under Amendment 62 to the Constitution of the State (“Amendment 62”) and Arkansas Code Annotated (1998 Repl. & 2023 Supp.) §§14-164-301 *et seq.* (as from time to time amended, the “Act”), to issue and sell bonds for the purpose of financing and refinancing the cost of capital improvements of a public nature.

The Series 2024 Bonds are to be issued by the City pursuant to Amendment 62, the Act and Ordinance No. [REDACTED], adopted and approved on August [REDACTED], 2024 (the “Authorizing Ordinance”), for the purpose of (i) financing all or a portion of the costs of certain street improvements and parks system improvements, and (ii) paying certain expenses in connection with the issuance of the Series 2024 Bonds. See the captions “ESTIMATED SOURCES AND USES OF FUNDS” and “THE PROJECTS” herein.

The Series 2024 Bonds are not general obligations of the City, but are special obligations payable solely from and secured by a pledge of the receipts of a special city-wide sales and use tax levied pursuant to the Act at the rate of one percent (1.00%) (the “Sales and Use Tax”). Such pledge shall be made on a parity basis with the existing pledge of receipts of the Sales Tax securing (i) \$24,620,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019 Bonds”), and (ii) \$68,440,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”). The Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds and any Additional Bonds subsequently issued by the City pursuant to the Indenture (defined below) will be secured on a parity basis. See the captions “THE 2024 BONDS – *Additional Bonds*,” “SECURITY FOR THE BONDS,” “HISTORICAL SALES AND USE TAX COLLECTIONS,” and “RATING” herein.

The faith and credit of the City are not pledged to the payment of the Series 2024 Bonds, and the Series 2024 Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction. The issuance of the Series 2024 Bonds shall not directly, indirectly or contingently obligate the City to levy or pledge any taxes whatsoever or to make any appropriation for the payment of the Series 2024 Bonds, except as described herein with respect to the Sales and Use Tax.

The Series 2024 Bonds are subject to redemption from excess moneys in the Project Fund following completion of the portions of the Projects to be financed with proceeds of the Series 2024 Bonds. The Series 2024 Bonds are also subject to redemption from Surplus Tax Receipts. “THE SERIES 2024 BONDS – *Redemption*” and “PROJECTED MANDATORY REDEMPTIONS” herein.

Pursuant to the provisions of a Continuing Disclosure Agreement dated as of the date of delivery of the Series 2024 Bonds, by and between the City and Simmons Bank, Pine Bluff, Arkansas, as dissemination agent (the “Continuing Disclosure Agreement”), the City has undertaken certain obligations with respect to providing ongoing disclosure of certain financial and operating data concerning the City and the Sales and Use Tax and of the occurrence of certain listed events. See the caption “SUMMARY OF THE CONTINUING DISCLOSURE AGREEMENT” herein.

* Preliminary; subject to change.

This Official Statement contains brief descriptions or summaries of, among other matters, the City, the Series 2024 Bonds, the Sales and Use Tax, the Continuing Disclosure Agreement, and the Trust Indenture dated as of August 1, 2019, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, and by a Second Supplemental Trust Indenture dated as of October 1, 2024 (as supplemented and amended, the “Indenture”), each by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”), pursuant to which the Series 2024 Bonds are issued and secured. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Indenture and the Continuing Disclosure Agreement are qualified in their entirety by reference to each such document, and all references to the Series 2024 Bonds are qualified in their entirety by reference to the definitive form thereof and the information with respect thereto included in the Indenture. Copies of the Continuing Disclosure Agreement, the Indenture, and the form of the Series 2024 Bonds included therein, are available from the City by writing to the attention of the Finance Director, City of Fayetteville, City Administration Building, 113 West Mountain, Fayetteville, Arkansas 72701 and, during the initial offering period only, from the Underwriter, Stephens Inc., 3425 North Futrell, Suite 201, Fayetteville, Arkansas 72703. Certain financial and operating data has been provided by the City from the audited records of the City and certain demographic information has been obtained from other sources which are believed to be reliable.

THE SERIES 2024 BONDS

Description. The Series 2024 Bonds will be initially dated as of the date of their delivery, and will bear interest payable semiannually on May 1 and November 1 of each year, commencing **May 1, 2025**, at the rates set forth on the inside cover page hereof. The Series 2024 Bonds will mature on November 1 in the years and in the principal amounts set forth on the inside cover page hereof.

The Series 2024 Bonds are issuable only in the form of fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, to which principal, premium, if any, and interest payments on the Series 2024 Bonds will be made so long as Cede & Co. is the registered owner of the Series 2024 Bonds. Individual purchases of the Series 2024 Bonds will be made only in book-entry form, in denominations of \$5,000 or integral multiples thereof. Individual purchasers (“Beneficial Owners”) of Series 2024 Bonds will not receive physical delivery of bond certificates. See the caption “BOOK-ENTRY ONLY SYSTEM” herein.

All interest payments on the Series 2024 Bonds shall be payable to the persons in whose name such Series 2024 Bonds are registered on the bond registration books maintained by the Trustee, as of the fifteenth day of the calendar month preceding the calendar month in which the applicable interest payment date falls. Principal of and premium, if any, on the Series 2024 Bonds shall be payable at the principal corporate trust office of the Trustee. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2024 Bond to the extent of the sum or sums so paid. So long as DTC or its nominee is the registered owner of the Series 2024 Bonds, disbursement of such payments to DTC Participants is the responsibility of DTC, and the disbursement of such payments to Beneficial Owners is the responsibility of DTC Participants or Indirect Participants, as more fully described herein.

Redemption. The Series 2024 Bonds are subject to redemption prior to maturity as follows:

(i) The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Project Fund moneys in excess of the amount needed to complete the Streets Project or the Parks Project.

(ii) The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Surplus Tax Receipts. “Surplus Tax Receipts” are Tax Receipts in excess of the amount necessary (i) to ensure the prompt payment of scheduled debt service on the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds and Additional Bonds, (ii) to pay any arbitrage rebate due under Section 148(f) of the Internal Revenue Code of 1986, as amended, with respect to the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds or any Additional Bonds, and (iii) to pay Trustee and Paying Agent fees and expenses. While any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts

shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds. See the caption “PROJECTED MANDATORY REDEMPTIONS” herein.

(iii) The Series 2024 Bonds are subject to redemption with funds from any source, at the option of the City, communicated in a written notice to the Trustee not less than sixty (60) days prior to the date fixed for redemption, in whole or in part on any date on or after November 1, 2025, in such maturities as shall be selected by the City and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed plus accrued interest to the date of redemption.

(iv) The Series 2024 Bonds maturing on November 1, 2025 are subject to mandatory sinking fund redemption prior to maturity in part, on November 1 in the years and principal amounts set forth below at a redemption price equal to 100% of the principal amount being redeemed plus accrued interest to the date of redemption.

Year	Principal Amount*
2025	\$
2026	
2027 (maturity)	

* Preliminary; subject to change.

At its option, to be exercised on or before the 45th day next preceding any mandatory sinking fund redemption date for any Series 2024 Bonds maturing November 1, 2025 (the “Term Bonds”), the City may deliver to the Trustee for cancellation Term Bonds of the appropriate maturity, or portions thereof (\$5,000 or any integral multiple thereof), in any aggregate principal amount desired. Each such Term Bond, or portion thereof, so delivered or previously redeemed (otherwise than through mandatory sinking fund redemption) and cancelled by the Trustee shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the City with respect to each such Term Bond on such mandatory sinking fund redemption date, and any excess over such amount shall be credited on future mandatory sinking fund redemption obligations with respect to such Term Bond in chronological order, and the principal amount of the corresponding Term Bonds so to be redeemed shall be accordingly reduced.

In the case of any defeasance of the Series 2024 Bonds, the dates of redemption, the principal amounts and the maturities of the Series 2024 Bonds to be redeemed will be determined by taking into consideration the mandatory redemption requirements set forth above and the receipts of the Sales and Use Tax for the most recent twelve months.

Partial Redemption of a Series 2024 Bond. If less than all of the Series 2024 Bonds of a maturity with a series are called for redemption, the particular Series 2024 Bonds or portions of Series 2024 Bonds to be redeemed shall be selected by lot in such manner as the Trustee in its discretion may deem fair and appropriate. So long as DTC or its nominee is the sole registered owner of the Series 2024 Bonds, the procedures established by DTC shall control with respect to the selection of the particular Series 2024 Bonds to be redeemed.

Notice of Redemption. Notice of the call for any redemption, identifying the Series 2024 Bonds or portions thereof being called and the date on which they shall be presented for payment, shall be mailed by the Trustee by first class mail (or, so long as DTC or its nominee is the sole registered owner of the Series 2024 Bonds, by any other means acceptable to DTC, including facsimile) to the registered owner of each such Series 2024 Bond addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Series 2024 Bond with respect to which no such failure or defect has occurred.

Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

Additional Bonds. The City may issue from time to time one or more series of Additional Bonds for the purpose of refunding the Series 2019A Bonds, the Series 2022 Bonds, the Series 2024 Bonds or any series of Additional Bonds, in whole or in part. No Additional Bonds may be issued for the purpose of financing capital improvements. Additional Bonds shall be secured equally and ratably with the Series 2019A Bonds, the Series 2022 Bonds, the Series 2024 Bonds and any other series of Additional Bonds theretofore issued and then Outstanding, except insofar any terms or conditions of redemption or purchase established under the Indenture may afford additional benefit or security for the Bonds of any particular series and except for the security afforded by any municipal bond insurance obtained with respect to a particular series of Bonds.

Before any Additional Bonds are authenticated, there shall be delivered to the Trustee a certificate of the City's Finance Director certifying that, based upon the most recent twelve (12) months of Sales and Use Tax collections, receipts of the Sales and Use Tax were not less than 150% of the maximum Annual Debt Service on all the Outstanding Bonds, plus the Additional Bonds to be issued. Notwithstanding anything described above to the contrary, no Additional Bonds shall be issued unless there is no default at the time of issuance under the Indenture.

Subordinate Obligations. Nothing in the Indenture shall prevent the City from authorizing and issuing bonds, notes, bond anticipation notes, warrants, certificates or other obligations or evidences of indebtedness, the payment of the principal of and premium, if any, and interest on which shall be made from receipts of the Sales and Use Tax, provided payments from such Sales and Use Tax receipts, and the lien and charge on such Sales and Use Tax receipts, shall be made junior and subordinate to the lien, pledge and charge created in the Indenture for the security and payment of the Bonds and other payments under the Indenture.

Before any Subordinate Obligations are issued, there shall be delivered to the Trustee a Certificate of the Finance Director of the City certifying that, based upon the most recent twelve (12) months of Sales and Use Tax collections, (i) receipts of the Sales and Use Tax were not less than 100% of the maximum Annual Debt Service on all then Outstanding Bonds and Subordinate Obligations, plus the Subordinate Obligations then proposed to be issued. No Subordinate Obligations shall be issued unless there is no default at the time of issuance under the Indenture.

Transfer or Exchange. The Series 2024 Bonds may be transferred on the books of registration kept by the Trustee by the registered owner in person or by the owner's duly authorized attorney, upon surrender thereof, together with a written instrument of transfer duly executed by the registered owner or the owner's duly authorized attorney. Upon surrender for transfer of any Series 2024 Bond at the principal corporate office of the Trustee, the City shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Series 2024 Bond or Bonds of the same series and in the same aggregate principal amount and of any authorized denomination or denominations.

Transfers of registration or exchanges of Series 2024 Bonds shall be without charge to the Holders of such Series 2024 Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Series 2024 Bond requesting such transfer or exchange as a condition precedent to the exercise of such privilege.

The Trustee shall not be required to transfer or exchange any Series 2024 Bond during the period from and including a Record Date to the next succeeding interest payment date of such Series 2024 Bond nor to transfer or exchange any Series 2024 Bond after the mailing of notice calling such Series 2024 Bond for redemption has been made, and prior to such redemption.

So long as DTC or its nominee is the sole registered owner of the Series 2024 Bonds, transfers of beneficial interests in the Series 2024 Bonds shall be in accordance with the rules and procedures of DTC and its direct and indirect participants. See the caption "BOOK-ENTRY ONLY SYSTEM" herein.

SECURITY FOR THE BONDS

General. The Series 2024 Bonds are special obligations of the City secured by and payable from the receipts of a special city-wide sales and use tax levied pursuant to the Act at the rate of one percent (1.00%) (the "Sales and Use Tax"). The Sales and Use Tax was levied under Ordinance No. 6216, duly adopted by the City Council of the City on December 18, 2018 (the "Election Ordinance"). Pursuant to the Election Ordinance, a special election was held on April 9, 2019, at which time the qualified electors of the City approved the issuance of capital improvement bonds in aggregate principal amount not to exceed \$213,865,000 and the corresponding levy of the Sales and Use Tax. The receipts of the Sales and Use Tax were pledged to secure the payment of Debt Service on the Series 2024 Bonds pursuant to Ordinance No. [REDACTED], duly adopted by the City Council of the City on August [REDACTED], 2024 (the

“Authorizing Ordinance”). Such pledge is made on a parity basis with an existing pledge of such receipts securing (i) \$24,620,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), and (ii) \$68,440,000 outstanding principal amount of the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”) .

Pursuant to the terms of the Election Ordinance, the collection of the Sales and Use Tax commenced on October 1, 2019. See the captions “THE SALES AND USE TAX” and “HISTORICAL SALES AND USE TAX COLLECTIONS” herein.

The Series 2024 Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction. The issuance of the Series 2024 Bonds shall not directly, indirectly or contingently obligate the City to levy or pledge any taxes whatsoever or to make any appropriation for the payment of the Series 2024 Bonds, except as described herein with respect to the Sales and Use Tax.

BOOK-ENTRY ONLY SYSTEM

The Series 2024 Bonds will be issued only as one fully registered Series 2024 Bond for each maturity, in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York (“DTC”), as registered owner of all the Series 2024 Bonds. The fully registered Series 2024 Bonds will be retained and immobilized in the custody of DTC.

DTC (or any successor securities depository) or its nominee for all purposes under the Indenture will be considered by the City and the Trustee to be the owner or holder of the Series 2024 Bonds.

Owners of any book entry interests in the Series 2024 Bonds (the “book entry interest owners”) described below, will not receive or have the right to receive physical delivery of the Series 2024 Bonds, and will not be considered by the City and the Trustee to be, and will not have any rights as, owners or holders of the Series 2024 Bonds under the bond proceedings and the Indenture except to the extent, if any, expressly provided thereunder.

CERTAIN INFORMATION REGARDING DTC AND DIRECT PARTICIPANTS IS SET FORTH BELOW. THIS INFORMATION HAS BEEN PROVIDED BY DTC. THE CITY, THE UNDERWRITER AND BOND COUNSEL ASSUME NO RESPONSIBILITY FOR THE ACCURACY OF SUCH STATEMENTS.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides custody and asset servicing for over 3.6 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments (from over 120 countries and territories) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges among Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, the National Securities Clearing Corporation and the Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has an S&P Global Ratings’ rating of “AA+.” The DTC Rules applicable to its Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of Series 2024 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2024 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2024 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2024 Bonds are to be accomplished by

entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2024 Bonds, except in the event that use of the Book-Entry System for the Series 2024 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2024 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2024 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2024 Bonds, DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2024 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Redemption notices shall be sent to DTC. If less than all of the Series 2024 Bonds within a series and maturity are to be redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Series 2024 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the Record Date. The Omnibus Proxy will assign Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2024 Bonds are credited on the Record Date (identified in a listing attached to the Omnibus Proxy).

Payment of debt service and redemption proceeds with respect to the Series 2024 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Trustee on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and debt service to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

BENEFICIAL OWNERS SHOULD CONSULT WITH THE DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS FROM WHOM THEY PURCHASE A BOOK ENTRY INTEREST TO OBTAIN INFORMATION CONCERNING THE SYSTEM MAINTAINED BY SUCH DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS TO RECORD SUCH INTERESTS, TO MAKE PAYMENTS, TO FORWARD NOTICES OF REDEMPTION AND OF OTHER INFORMATION.

THE CITY AND THE TRUSTEE HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY ASPECTS OF THE RECORDS OR NOTICES RELATING TO, OR PAYMENTS MADE ON ACCOUNT OF, BOOK ENTRY INTEREST OWNERSHIP, OR FOR MAINTAINING, SUPERVISING OR REVIEWING ANY RECORDS RELATING TO THAT OWNERSHIP.

The Trustee and the City, so long as a book entry method of recording and transferring interest in the Series 2024 Bonds is used, will send any notice of redemption or of any Indenture amendment or supplement or other notices to Bondholders under the Indenture only to DTC (or any successor securities depository) or its nominee. Any failure of DTC to advise any Direct Participants, or of any Direct Participants or Indirect Participants to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity of the redemption of the Series 2024 Bonds called for redemption, the Indenture amendment or supplement, or any other action premised on notice given under the Indenture.

The City and the Trustee cannot and do not give any assurances that DTC, Direct Participants, Indirect Participants or others will distribute payments of debt service on the Series 2024 Bonds made to DTC or its nominee as the registered owner of the Series 2024 Bonds, or any redemption or other notices, to the Beneficial Owners, or that they will do so on a timely basis, or that DTC will serve and act in a manner described in this Official Statement.

DTC may discontinue providing its services as securities depository with respect to the Series 2024 Bonds at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, bond certificates are required to be printed and delivered.

In addition, the City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered.

THE PROJECTS

Streets Project. Approximately \$ [REDACTED] * of the proceeds of the Series 2024 Bonds will be deposited into the Streets Project Account of the Project Fund to finance all or a portion of the costs of right-of-way acquisition, design, construction, reconstruction, repair, resurfacing, straightening and width modification of certain City streets, which may include related sidewalk, traffic signal and control, lighting, curbing, guttering, bicycle lane, landscaping, drainage and safety improvements and related curbside pedestrian facilities such as bus pickup structures and concrete waiting pads (the “Streets Project”).

Parks Project. Approximately \$ [REDACTED] * of the proceeds of the Series 2024 Bonds will be deposited into the Parks Project Account of the Project Fund to finance all or a portion of the costs of acquisition, design, construction and equipping of certain regional park and other parks system improvements, which may include athletic fields and facilities, playgrounds, pools and splash pads, trails, campgrounds, picnic areas and pavilions, land acquisition, open space preservation and other recreational facilities and support facilities, such as restrooms and parking (the “Parks Project”).

* Preliminary; subject to change.

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HISTORICAL SALES AND USE TAX COLLECTIONS

Pursuant to the terms of the Election Ordinance and State law, the collection of the 1.00% Sales and Use Tax commenced on October 1, 2019. At such time an existing three-quarters of one percent (0.75%) special city-wide sales and use tax and an existing one-quarter of one percent (0.25%) special city-wide sales and use tax (collectively, the "Prior Tax") which was pledged to the payment of prior sales and use tax bonds was simultaneously terminated and such bonds were retired. Set forth below is a table showing historical receipts of the Prior Tax and the Sales and Use Tax. Collections of the Sales and Use Tax received by the City in the most recent twelve-month period (_____, 1, 2023 through _____, 2024) were \$_____, a _____% increase over the amount of combined collections from the Sales and Use Tax received by the City during the previous twelve-month period (_____, 1, 2022 to _____, 2023).

Year ⁽¹⁾	Historical Collections of 0.25% Prior Tax	Historical Collections of 0.75% Prior Tax	Historical Collections of 1.00% Sales and Use Tax	Combined Collections of Sales and Use Taxes	Growth Percentage
2009	\$ 3,927,564	\$11,782,692	n/a	\$15,710,256	n/a
2010	3,917,717	11,753,150	n/a	15,670,867	-0.25%
2011	4,129,686	12,389,060	n/a	16,518,746	5.41%
2012	4,389,519	13,168,559	n/a	17,558,078	6.29%
2013	4,513,873	13,541,618	n/a	18,055,491	2.83%
2014	4,604,085	13,812,257	n/a	18,416,342	2.00%
2015	4,950,155	14,850,464	n/a	19,800,619	7.52%
2016	5,161,048	15,483,143	n/a	20,644,191	4.26%
2017	5,324,281	15,972,843	n/a	21,297,124	3.16%
2018	5,576,368	16,729,104	n/a	22,305,472	4.73%
2019 ⁽³⁾	n/a	n/a	n/a	23,414,516 ⁽²⁾	4.97%
2020 ⁽³⁾	n/a	n/a	23,759,681	23,759,681	1.47%
2021 ⁽³⁾	n/a	n/a	27,530,298	27,530,298	15.87%
2022 ⁽³⁾	n/a	n/a	30,142,529	30,142,529	9.49%
2023 ⁽³⁾	n/a	n/a	31,790,727	31,790,727	5.47%

(1) Sales and use tax receipts are remitted by the Treasurer of the State of Arkansas to the City in the second month following the month of their collection.

(2) Combined collections of the Existing Tax for the nine months ended September 30, 2019 and the Sales and Use Tax for the three months ended December 31, 2019.

(3) Act 822 of 2019 went into effect on July 1, 2019, and provides for the collection of sales and use taxes by remote sellers to Arkansas buyers.

Source: City of Fayetteville

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ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the Series 2024 Bonds are expected to be used as follows:

Sources of Funds⁽¹⁾

Par Amount of Series 2024 Bonds	\$15,000,000
Net Original Issue Premium (Discount)	<u> </u>
Total Sources:	<u>\$ </u>

Uses of Funds⁽¹⁾

Deposit to Streets Project Account of Project Fund	\$
Deposit to Parks Project Account of Project Fund	
Costs of Issuance, including Underwriter's Discount	
Contingency	<u> </u>
Total Uses:	<u>\$ </u>

⁽¹⁾ Preliminary; subject to change.

ESTIMATED DEBT SERVICE REQUIREMENTS

As of the date of closing, the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds will constitute the only debt obligations secured by receipts of the Sales and Use Tax. The following table sets forth the amounts required to pay scheduled principal of and interest on the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds during each year:

<u>Year</u>	<u>Series 2019A Debt Service</u>	<u>Series 2022 Debt Service</u>	<u>Series 2024 Principal</u> ⁽¹⁾	<u>Series 2024 Interest</u> ⁽²⁾	<u>Total Debt Service</u>
2024	\$ 8,488,550	\$7,105,263	\$	\$	\$
2025	8,491,050	7,098,512			
2026	8,490,550	7,101,513			
2027	8,476,300	7,116,112			
2028	2,346,000	7,105,738			
2029	--	7,090,569			
2030	--	7,106,088			
2031	--	14,846,287			
2032	--	16,063,931			
2033	--	--	--	--	
Totals:	<u>\$36,292,450</u>	<u>\$80,634,013</u>	<u>\$15,000,000</u>	<u>\$</u>	<u>\$</u>

(1) Preliminary; subject to change. Including mandatory sinking fund redemptions.

(2) Preliminary; subject to change. Assuming for purposes of this Preliminary Official Statement an average coupon rate on the Series 2024 Bonds of % per annum.

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ESTIMATED DEBT SERVICE COVERAGE

Set forth below is a table showing estimated debt service coverage with respect to the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds. Collections of the Sales and Use Tax received during the twelve-month period ended [REDACTED], 2024 were utilized for the purpose of making the coverage calculations. See the caption “HISTORICAL SALES AND USE TAX COLLECTIONS” herein.

Historical Tax Receipts of Sales and Use Tax ⁽¹⁾	\$
Maximum Annual Debt Service ⁽²⁾	\$
Maximum Annual Debt Service Coverage	X

⁽¹⁾ Actual collections of the Sales and Use Tax received during the last twelve-month period ending [REDACTED], 2024. See the caption “HISTORICAL SALES AND USE TAX COLLECTIONS” herein.

⁽²⁾ Preliminary; subject to change, and representing debt service on the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds in 20[REDACTED]. See the caption “ESTIMATED DEBT SERVICE REQUIREMENTS” herein.

THE COVERAGE NUMBERS SET FORTH ABOVE ARE BASED ON HISTORICAL RECEIPTS OF THE SALES AND USE TAX. ACTUAL RECEIPTS OF THE SALES AND USE TAX WILL DEPEND ON NUMEROUS FACTORS, AND THERE CAN BE NO ASSURANCE THAT FUTURE RECEIPTS OF THE SALES AND USE TAX AVAILABLE TO PAY DEBT SERVICE ON THE SERIES 2019A BONDS, SERIES 2022 BONDS AND SERIES 2024 BONDS WILL APPROXIMATE SUCH HISTORICAL RESULTS. See the caption “THE SALES AND USE TAX – *Future Sales and Use Tax Receipts*” herein.

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PROJECTED MANDATORY REDEMPTIONS

The table under the caption “ESTIMATED DEBT SERVICE REQUIREMENTS” does not reflect possible mandatory redemptions of the Series 2019A Bonds, Series 2022 Bonds and Series 2024 Bonds from Surplus Tax Receipts, if available. Surplus Tax Receipts are all receipts of the Sales and Use Tax in excess of the amount necessary (i) to assure the prompt payment of the principal of and interest on Outstanding Series 2019A Bonds, Series 2022 Bonds and Series 2024 Bonds, (ii) to pay any arbitrage rebate due under Section 148(f) of the Code, and (iii) to pay Trustee and Paying Agent fees and expenses. While any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds. THERE CAN BE NO ASSURANCE GIVEN THAT RECEIPTS OF THE SALES AND USE TAX WILL BE REALIZED IN THE AMOUNTS ASSUMED IN THE TABLE BELOW. See the caption “THE SALES AND USE TAX — *Future Sales and Use Tax Receipts*” herein.

Date ⁽¹⁾	Series 2019A Principal Due	Series 2019A Bonds Redeemed Prior to Maturity ⁽²⁾⁽³⁾	Series 2022 Principal Due	Series 2022 Bonds Redeemed Prior to Maturity ⁽²⁾⁽⁴⁾	Series 2024 Principal Due	Series 2024 Bonds Redeemed Prior to Maturity ⁽²⁾⁽⁵⁾	Total Series 2019A, Series 2022 and Series 2024 Principal Retired
11-1-24	\$	\$	\$	\$	\$	\$	\$
5-1-25							
11-1-25							
5-1-26							
11-1-26							
5-1-27							
11-1-27							
5-1-28							
11-1-28							
5-1-29							
11-1-29							
5-1-30							
11-1-30							
5-1-31							
11-1-31							
5-1-32							
11-1-32	--	--	--	--			--
Totals:	\$	\$	\$	\$			\$

- (1) The Series 2019A Bonds, Series 2022 Bonds and Series 2024 Bonds are subject to mandatory redemption from Surplus Tax Receipts on each May 1 and November 1. See the caption “THE SERIES 2024 BONDS — *Redemption*” herein.
- (2) Assuming annual receipts of the Sales and Use Tax of \$[REDACTED].
- (3) Projected mandatory redemptions related to Series 2019A Bonds maturing November 1, 20[REDACTED] through November 1, 20[REDACTED].
- (4) Projected mandatory redemptions related to Series 2022 Bonds maturing November 1, 20[REDACTED] through November 1, 20[REDACTED].
- (5) Projected mandatory redemptions related to Series 2024 Bonds maturing November 1, 20[REDACTED] through November 1, 20[REDACTED].

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THE CITY

General. The City is a city of the first class organized and existing under the laws of the State of Arkansas. The City is the seat of government of Washington County (the “County”) and is the second largest city in the State. The City is located in the Metropolitan Statistical Area of Fayetteville/Springdale/Rogers (the “MSA”), which includes all of Washington and Benton Counties in the northwest corner of the State and is approximately 185 miles northwest of Little Rock, Arkansas, 125 miles east of Tulsa, Oklahoma, and 210 miles south of Kansas City, Missouri.

The City is served by U.S. Interstate 49, U.S. Highways 62 and 71, and State Highways 16, 45, 112, 156, 180 and 265. The Burlington Northern Railroad has several lines running through the City, and a general aviation airport with a 6,006-foot runway is available for limited commuter travel. The Northwest Arkansas Regional Airport is located approximately 40 minutes from downtown Fayetteville and provides daily flights to numerous venues.

Government. The City currently operates under the Mayor-Council form of government pursuant to which a mayor, city attorney, city clerk and eight City Council members are elected, two from each of the City’s four wards. The mayor, city attorney and city clerk are full-time positions elected to four-year terms. City Council members also serve four- year terms.

The City’s elected officials and the dates on which their respective terms expire are as follows:

Name	Office	Term Expires
Lioneld Jordan	Mayor	12/31/24
Kit Williams	City Attorney	12/31/26
Kara Paxton	City Clerk	12/31/24
Scott Berna	Council Member	12/31/26
Sarah Bunch	Council Member	12/31/24
Holly Hertzberg	Council Member	12/31/24
D’Andre Jones	Council Member	12/31/24
Sarah Moore	Council Member	12/31/26
Robert Stafford	Council Member	12/31/26
Teresa Turk	Council Member	12/31/26
Mike Wiederkehr	Council Member	12/31/24

Financial Reporting. The City’s Comprehensive Annual Financial Report for the fiscal year ended December 31, 2023 can be accessed at: www.fayetteville-ar.gov/ArchiveCenter/ViewFile/Item/2673

Population. The following is a table of population changes for the City, the MSA and the State of Arkansas, according to the United States Census Bureau:

Year	City of Fayetteville	MSA	State of Arkansas
1960	20,274	92,069	1,786,272
1970	30,729	127,846	1,923,322
1980	36,608	178,609	2,286,435
1990	42,099	210,908	2,350,624
2000	58,047	311,121	2,673,400
2010	73,580	463,204	2,915,918
2020	93,949	546,725	3,011,524

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Economic Data. Per capita personal income figures for the MSA and the State of Arkansas are as follows:

Year	MSA	State of Arkansas
2010	\$39,003	\$32,218
2011	43,674	34,180
2012	49,682	36,287
2013	48,544	36,285
2014	54,080	38,218
2015	57,357	39,266
2016	59,389	40,179
2017	61,204	41,402
2018	65,248	43,029
2019	62,267	45,751
2020	64,548	47,147
2021	72,389	51,636
2022	74,943	52,618
2023	n/a	n/a

Source: Bureau of Economic Analysis, St. Louis Federal Reserve

The following table shows the total assessed value of non-utility real and personal property within the City for the years indicated:

Year	Real Property	Personal Property	Total
2012	\$1,063,617,013	\$203,289,225	\$1,266,906,238
2013	1,084,550,127	216,005,532	1,300,555,659
2014	1,115,992,871	226,841,704	1,342,834,575
2015	1,171,158,618	232,141,593	1,403,300,191
2016	1,213,852,296	252,836,149	1,466,688,495
2017	1,257,361,951	246,656,011	1,504,017,962
2018	1,309,055,168	261,728,096	1,570,783,264
2019	1,352,620,084	247,101,970	1,599,722,054
2020	1,529,519,526	262,267,946	1,791,787,472
2021	1,647,091,410	282,921,776	1,930,013,186
2022	1,774,725,982	310,717,662	2,085,443,644
2023	2,030,990,539	340,274,044	2,371,264,583

Source: Washington County Tax Assessor's Office. The assessed value represents 20% of the appraised value of property.

Building permits issued by the City⁽¹⁾ are shown below for the years indicated:

	2020	2021	2022	2023	2024⁽²⁾
Residential Building Permits	949	779	928	746	483
Commercial Building Permits	70	30	22	19	13
Value of All Building Permits	\$532,417,273	\$430,985,499	\$	\$	\$

(1) Does not include building activity of the University of Arkansas, school permits and additions/alterations to existing structures.

(2) Through June 30, 2024.

Source: City of Fayetteville.

Unemployment figures (not seasonally adjusted) for Washington County and the State of Arkansas, according to the Arkansas Division of Workforce Services, are as follows:

Year	Washington County	State of Arkansas
2013	5.2%	7.1%
2014	4.3	5.9
2015	3.5	5.0
2016	2.8	4.0
2017	2.6	3.7
2018	2.6	3.6
2019	2.5	3.5
2020	4.7	6.1
2021	2.9	4.0
2022	2.3	3.2
2023	2.3	3.3
2024*	2.3	3.4

* May, 2024 only; preliminary and not seasonally adjusted.

Employment and Industry. The principal campus of the University of Arkansas is located in the City and had total enrollment for the spring semester of 2024 of approximately 30,392. On the Fayetteville campus, the University employs approximately 7,000 faculty, administrative, secretarial, clerical and maintenance personnel in both full-time and part-time positions, making the University the largest employer in the City.

Other major employers in the City, their products or services and approximate number of employees are set forth below:

Employer	Product or Service	Employees
Washington Regional Medical Center	Health care	3,548
Veteran's Admin. Medical	Health care	1,737
Fayetteville School District	Public schools	1,550
City of Fayetteville	City government	849
Tyson Mexican Original	Retail	768
Washington County	County government	662
Wal-Mart Store #359	Retail	468
Wal-Mart Store #144	Retail	423
Wal-Mart #9149 (optical lab)	Manufacturer	359

Source: City of Fayetteville

THE SALES AND USE TAX

Generally. The Sales and Use Tax is levied under the Election Ordinance pursuant to the authority of the Act. The Sales and Use Tax is levied within the City on all items which are subject to taxation under The Arkansas Gross Receipts Act of 1941 and on the receipts from storing, using or consuming tangible personal property under The Arkansas Compensating (Use) Tax Act of 1949. The Sales and Use Tax is collected only on the gross receipts, gross proceeds or sales price in the maximum amount allowed from time to time under Arkansas law for "single transactions," subject to certain rebates and limitations. Pursuant to the Indenture and the Authorizing Ordinance, the City has pledged the receipts of the Sales and Use Tax (after the deduction of certain administrative charges) to the payment of the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds. Pursuant to the terms of the Election Ordinance, the collection of the Sales and Use Tax commenced on October 1, 2019. See "Appendix C – THE SALES AND USE TAX" for a detailed description of the property and services subject to sales and use taxation and the exemptions therefrom.

Administration. Pursuant to the State law, the Commissioner of Revenues of the State (the “Commissioner”) performs all functions incidental to the administration, collection, enforcement and operation of the Sales and Use Tax. All receipts of the Sales and Use Tax collected, less certain charges payable and retainage due the Commissioner for administrative services in the amount of 3% of the gross receipts of the Sales and Use Tax, shall be remitted by the State Treasurer to the Trustee monthly. See the caption “SUMMARY OF THE INDENTURE – *Application of Sales and Use Tax Receipts*” herein. In an effort to simplify and modernize the sales and use tax collection process, the State of Arkansas has opted to participate in the Streamlined Sales Tax Agreement, a cooperative effort among states, local governments and the business community.

Future Receipts of the Sales and Use Tax. Receipts of the Sales and Use Tax will be contingent upon the sale and use of property and services within the City, which activity is generally dependent upon economic conditions within the City and the surrounding trade area. Also, receipts of the Sales and Use Tax may be affected by changes to transactions exempted from the Sales and Use Tax made by legislation adopted by the General Assembly of the State or by the people of the State in the form of a constitutional amendment or initiated act. In the past the General Assembly of the State has considered new exemptions to sales and use taxes, such as food sales, which, if adopted, would materially reduce receipts of the Sales and Use Tax. The City has no control over actions of the General Assembly or the people of the State and cannot predict whether changes to the Sales and Use Tax may be made. **Accordingly, the City cannot predict with certainty the expected amount of receipts of the Sales and Use Tax to be received and, therefore, there can be no assurance that receipts of the Sales and Use Tax will be sufficient to pay the principal of and interest on the Series 2019A Bonds, Series 2022 Bonds and Series 2024 Bonds.**

SUMMARY OF THE INDENTURE

The following statements are brief summaries of certain provisions of the Indenture. The statements do not purport to be complete, and reference is made to the Indenture, copies of which are available for examination at the offices of the Finance Director of the City, for a full statement thereof.

Funds and Accounts. Receipts of the Sales and Use Tax are pledged by the Indenture to the payment of the principal of and interest on the Bonds. The following Funds and Accounts have been established with the Trustee in connection with the issuance of the Bonds:

Funds and Accounts

Revenue Fund
Bond Fund, and an Interest Account and a Principal Account therein
Redemption Fund
Cost of Issuance Fund
Project Fund, and a Streets Project Account and Parks Project Account therein
Rebate Fund

Application of Receipts of the Sales and Use Tax. The application of receipts of the Sales and Use Tax is as follows:

(a) Revenue Fund. All receipts from the Sales and Use Tax shall, as and when received, be deposited into the Revenue Fund. All moneys at any time in the Revenue Fund shall be applied on a monthly basis to the payment of Debt Service on the Bonds, to the payment of any arbitrage rebate due under Section 148(f) of the Code, to the payment of fees and expenses of the Trustee and any Paying Agent, and to the early redemption of the Bonds, at the times and in the amounts set forth as follows:

(b) Bond Fund. Upon receipt, but in no event later than the last day of each month in which receipts of the Sales and Use Tax are deposited in the Revenue Fund, there shall be transferred from the Revenue Fund (i) into the Interest Account of the Bond Fund, an amount equal to 1/6 of the interest on the Outstanding Bonds due on the next interest payment date, and (ii) into the Principal Account of the Bond Fund, an amount equal to 1/12 of the next scheduled principal maturity of Outstanding Bonds (including mandatory sinking fund redemptions). Moneys

in the Bond Fund shall be used solely for the purpose of paying Debt Service on the Bonds or for redemption of Bonds, as provided in the Indenture. The Trustee shall withdraw from the Bond Fund, on the date of any principal or interest payment, an amount equal to such payment for the sole purpose of paying the same.

If receipts of the Sales and Use Tax in the Revenue Fund are insufficient to make the required monthly payment into the Bond Fund, the amount of any such deficiency in the payment made shall be added to the amount otherwise required to be paid into the Bond Fund not later than last day of the next succeeding month.

When the moneys held in the Revenue Fund, the Bond Fund and the Redemption Fund shall be and remain sufficient to pay in full the principal of and interest on all Bonds then Outstanding in accordance with the Indenture, together with the required fees and expenses to be paid or reimbursed to the Trustee and any Paying Agent, the City shall have no further obligation to make payments into such Funds and the levy of the Sales and Use Tax shall cease.

(c) Rebate Fund. The Trustee shall establish and maintain, separate and apart from any other Funds and Accounts established and maintained under the Indenture, the Rebate Fund, which Fund is not pledged to the payment of any Bonds. Subject to transfer to the United States in payment of any arbitrage rebate due under Section 148(f) of the Code, all moneys at any time deposited in the Rebate Fund shall be held by the Trustee in trust, and neither the City nor the Owner of any Bond shall have any rights in or claim to such money. Any amounts remaining in the Rebate Fund after payment in full of the rebate amount owing to the United States, within sixty (60) days after the date on which the last Bond is redeemed, shall be transferred to the Revenue Fund.

(d) Redemption Fund. After making the required deposits into the Bond Fund and into the Rebate Fund, and after paying the fees and expenses of the Trustee and any Paying Agent, there shall be paid from the Revenue Fund into the Redemption Fund all remaining moneys in the Revenue Fund (the "Surplus Tax Receipts"). Moneys in the Redemption Fund shall be transferred to the appropriate Principal Account of the Bond Fund at such times as may be necessary to effectuate redemptions of Bonds on the first available redemption date. While any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds. See the captions "THE SERIES 2024 BONDS – *Redemption*" and "PROJECTED MANDATORY REDEMPTIONS" herein.

(e) Project Fund. Portions of the proceeds of the Series 2024 Bonds shall be deposited in the Streets Project Account and the Parks Project Account of the Project Fund. See the captions "ESTIMATED SOURCES AND USES OF FUNDS" and "THE PROJECTS" herein. Amounts in the various Accounts in the Project Fund shall be expended only for the payment of Project Costs related to the applicable portion of the Project being financed with the proceeds of the Series 2024 Bonds upon the submission of Requisitions by the City to the Trustee. The Trustee shall only make payments from the Project Fund pursuant to and in accordance with Requisitions. Within ninety (90) days following completion of the portion of a Project being financed with a particular series of Bonds, the City shall deliver to the Trustee its Certificate stating that the applicable portion of such Project is complete and the Trustee shall transfer the remaining moneys in the applicable Account of the Project Fund (save and except moneys needed to satisfy unpaid Project Costs) to the Redemption Fund for application to the retirement of the Series 2024 Bonds by redemption or purchase. See the caption "THE SERIES 2024 BONDS – *Redemption*" herein.

(f) Cost of Issuance Fund. A portion of the proceeds of the Series 2024 Bonds shall be deposited to the credit of the Cost of Issuance Fund. The Trustee shall pay those Costs of Issuance as directed by the City pursuant to a Certificate delivered on a Closing Date. After all Costs of Issuance have been paid with respect to the Series 2024 Bonds (and in any event not later than **February 1, 2025**), any remaining moneys in the Cost of Issuance Fund shall be transferred to the Interest Account of the Bond Fund.

Investment of Funds. At the direction of the City or absent such direction, the Trustee shall invest moneys in Funds or Accounts held by the Trustee in Investment Securities with maturity or redemption dates consistent with the times at which said moneys will be required for the purposes provided in the Indenture. Moneys in separate Funds or Accounts may be commingled for the purpose of investment.

Valuation of Funds and Accounts. In determining the value of any Fund or Account held by the Trustee under the Indenture, the Trustee shall credit Investment Securities at the fair market value thereof, as determined by

the Trustee by any method selected by the Trustee in its reasonable discretion. No less frequently than annually, and in any event within thirty (30) days prior to the end of each Fiscal Year, the Trustee shall determine the value of each Fund and Account held under the Indenture and shall report such determination to the City.

The Trustee shall sell or present for redemption any Investment Securities as necessary in order to provide money for the purpose of making any payment required under the Indenture, and the Trustee shall not be liable for any loss resulting from any such sale.

Responsibility of Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it at the direction of the City.

Instruments of Further Assurance. At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, ordinances, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming of all and singular the receipts from the Sales and Use Tax and all other moneys pledged or assigned by the Indenture, or intended so to be, or which the City may become bound to pledge or assign.

Tax Covenants. The City shall not use or permit the use of any Bond proceeds or any other funds of the City, directly or indirectly, in any manner, and will not take or permit to be taken any other action or actions which would adversely affect the exclusion of interest on any Bond from gross income for federal income tax purposes. No part of the proceeds of the Series 2024 Bonds shall at any time be used, directly or indirectly, to acquire securities or obligations the acquisition of which would cause any of such Series 2024 Bonds to be an “arbitrage bond” as defined in Sections 148(a) and (b) of the Code. The City agrees that so long as any of the Series 2024 Bonds remain Outstanding, it will comply with the provisions of the applicable Tax Compliance Agreement.

Defeasance. Any Bond shall be deemed to be paid within the meaning of the Indenture when payment of the principal of and premium, if any, and interest on such Bond (whether at maturity or upon redemption as provided in the Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Securities (provided that such deposit will not affect the tax-exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148(a) of the Code, as reflected in an opinion of Bond Counsel delivered to the Trustee), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agent pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and any said Paying Agent. In the case of any defeasance of Bonds, the dates of redemption of such Bonds and the principal amounts and maturities of Bonds to be redeemed on such dates will be determined by taking into consideration the applicable redemption requirements with respect to the Bonds to be defeased and the receipts of the Sales and Use Tax for the most recent twelve months.

Events of Default. Each of the following events shall constitute and is referred to in the Indenture as an “Event of Default”:

- (a) Default in the due and punctual payment of any interest on any Bond;
- (b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;
- (c) Default in the payment of any other amount required to be paid under the Indenture or the performance or observance of any other of the covenants, agreements or conditions contained in the Indenture, or in the Bonds issued under the Indenture, and continuance thereof for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied, shall have been given to the City by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of Holders of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding, unless the Trustee, or the Trustee and Holders of an aggregate principal amount of Bonds not less than the aggregate principal amount of Bonds the Holders of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the

applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such period and is being diligently pursued;

(d) The filing of a petition in bankruptcy by or against the City under the United States Bankruptcy Code or the commencement of a proceeding by or against the City under any other law concerning insolvency, reorganization or bankruptcy; and

(e) If the State has limited or altered the rights of the City pursuant to the Act, as in force on the date of the Indenture, to fulfill the terms of any agreements made with the Trustee or the Bondholders or in any way impaired the rights and remedies of the Trustee or the Bondholders while any Bonds are Outstanding.

The term “default” as used in clauses (a), (b) and (c) above shall mean default by the City in the performance or observance of any of the covenants, agreements or conditions on its part contained in the Indenture, or in the Bonds Outstanding thereunder, exclusive of any period of grace required to constitute a default an “Event of Default” as described above.

Acceleration. Upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding shall, by notice in writing delivered to the City, declare the principal of all Bonds then Outstanding, together with any premium and the interest accrued thereon, immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

Other Remedies; Rights of Bondholders. Upon the occurrence of an Event of Default, the Trustee may, as an alternative, pursue any available remedy by suit at law or in equity, including, without limitation, mandamus to enforce the payment of the principal of and premium, if any, and interest on the Bonds then Outstanding.

If an Event of Default shall have occurred, and if it shall have been requested so to do by the Holders of 51% in aggregate principal amount of Bonds Outstanding and if it shall have been indemnified as provided in the Indenture, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred upon it by the Indenture as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

No remedy by the terms of the Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default under the Indenture, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Rights and Remedies of Bondholders. No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy thereunder, unless a default has occurred of which the Trustee has been notified as provided in the Indenture, or of which by the Indenture it is deemed to have notice, nor unless such default shall have become an Event of Default and the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers granted or to institute such action, suit, or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in the Indenture nor unless the Trustee shall thereafter fail or refuse to exercise the powers granted, or to institute such action, suit, or proceeding in its own name; and such notification, request and offer of indemnity are declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture or for the appointment of a receiver or for any other remedy thereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of the Indenture by action of the Holder or Holders or to enforce any right under the Indenture except in the manner therein provided, and that all proceedings at law or in

equity shall be instituted, held and maintained in the manner therein provided for the equal benefit of the Holders of all Bonds Outstanding thereunder. Nothing in the Indenture contained shall, however, affect or impair the right of any Bondholders to enforce the payment of the principal of and premium, if any, and interest on any Bonds at and after the maturity thereof, or the obligation of the City to pay the principal of and premium, if any, and interest on each of the Bonds issued under the Indenture to the respective Holders thereof at the time and place in said Bonds expressed.

Supplemental Indentures Not Requiring Consent of Bondholders. The City and the Trustee may, from time to time and at any time, without the consent of or notice to the Bondholders, enter into Supplemental Indentures as follows:

- (a) to cure any formal defect, omission, inconsistency or ambiguity in the Indenture;
- (b) to grant to or confer or impose upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with the Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee without its consent;
- (c) to add to the covenants and agreements of, and limitations and restrictions upon, the City in the Indenture other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with the Indenture as theretofore in effect;
- (d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, the Indenture, of the Trust Estate or of any other moneys, securities or funds;
- (e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended;
- (f) to authorize the issuance and sale of one or more series of Additional Bonds;
- (g) to make such additions, deletions or modifications as may be necessary to assure compliance with Section 148(f) of the Code relating to required rebate to the United States or otherwise as may be necessary to assure exemption from federal income taxation of interest on the Bonds; or
- (h) to modify, alter, amend or supplement the Indenture in any other respect which is not materially adverse to the Bondholders and which does not involve a change described in clause (a), (b), (c), (d), (e) or (f) above and which, in the judgment of the Trustee, is not to the prejudice of the Trustee.

Supplemental Indentures Requiring Consent of Bondholders. Subject to the terms and provisions contained in this paragraph, and not otherwise, the Holders of not less than 2/3 in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in the Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee of such indenture or indentures supplemental to the Indenture as shall be deemed necessary and desirable by the City for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that nothing contained in the Indenture shall permit or be construed as permitting (a) an extension of the maturity (or mandatory redemption date) of the principal of or the interest on any Bond issued thereunder, or (b) a reduction in the principal amount of or redemption premium or rate of interest on any Bond issued thereunder, or (c) the creation of any lien on the Trust Estate or any part thereof, except as expressly permitted in the Indenture, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (f) depriving the Holder of any Bond then Outstanding of the lien created on the Trust Estate.

If, at any time the City shall request the Trustee to enter into any Supplemental Indenture for any of the purposes described above, the Trustee shall, at the expense of the City, cause notice of the proposed execution of such Supplemental Indenture to be mailed by first class mail to each registered owner of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such Supplemental Indenture when consented to and approved as provided above. If the Holders of not less than 2/3 in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such

Supplemental Indenture shall have consented to and approved the execution thereof, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

SUMMARY OF THE CONTINUING DISCLOSURE AGREEMENT

The City has entered into an undertaking in the form of the Continuing Disclosure Agreement as required by the Indenture for the benefit of the Beneficial Owners of the Series 2024 Bonds to cause certain financial information to be sent to certain information repositories annually and to cause notice to be sent to such information repositories of certain specified events, pursuant to the requirements of Section (b)(5)(i) of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the “Rule”).

The City is a party to multiple continuing disclosure agreements for various bond issues of the City secured by different repayment sources. During the past five years, the City has identified certain instances in which filings were not made as required by such agreements. A listing of such instances, which may not be inclusive, is set forth below.

With respect to bonds secured by the City’s sales and use tax receipts, by library tax receipts, by parking revenues, and by receipts of a special hotel, motel and restaurant gross receipts tax, the City’s audited financial statements for fiscal years 2019 and 2020 were not posted on a timely basis (1 to 3 days late). However, with respect to said sales and use tax bonds and library tax bonds, unaudited financial statements for such fiscal years were timely posted to the EMMA system, and as required by the Rule, upon their availability, the audited financial statements were subsequently posted. With respect to the aforementioned parking revenue bonds and hotel, motel and restaurant gross receipts tax bonds, for fiscal year 2020 only, unaudited financial statements were timely posted to the EMMA system, and as required by the Rule, upon their availability, the audited financial statements for such fiscal year were subsequently posted.

The City makes no representation as to the materiality of the continuing disclosure delinquencies and omissions described above.

The City has undertaken steps to ensure future compliance with its continuing disclosure obligations.

The Continuing Disclosure Agreement contains the following covenants and provisions:

(a) The City covenants that it will disseminate, or will cause the Dissemination Agent to disseminate, the Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth in Exhibit I to the Continuing Disclosure Agreement) by delivering such Annual Financial Information and the Audited Financial Statements to the MSRB within 180 days of the completion of the City’s Fiscal Year. The City is required to deliver or cause delivery of such information in Prescribed Form and by such time so that such entity receives the information by the dates specified.

(b) Not later than five (5) Business Days prior to the date specified in the preceding paragraph for providing the Annual Financial Information Disclosure to the MSRB, the City shall provide such Annual Financial Information Disclosure to the Dissemination Agent. If by such date the Dissemination Agent has not received a copy of the applicable Annual Financial Information Disclosure, the Dissemination Agent shall contact the applicable Disclosure Representative to determine if the City is in compliance with the preceding paragraph. If the Dissemination Agent is unable to verify that the Annual Financial Information Disclosure has been provided to the MSRB by the date required in the preceding paragraph, the Dissemination Agent shall file a notice to such effect with the MSRB in substantially the form attached as Exhibit III to the Continuing Disclosure Agreement.

(c) If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will disseminate or cause dissemination of a statement to such effect as part of its Annual Financial Information for the Fiscal Year in which such event first occurs.

(d) If any amendment is made to the Continuing Disclosure Agreement, the Annual Financial Information for the Fiscal Year in which such amendment is made (or in any notice or supplement provided to the MSRB) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

(e) The City covenants that it will disseminate or cause dissemination in a timely manner, not in excess of ten (10) Business Days after the occurrence of the event, of Listed Events Disclosure to the MSRB in Prescribed Form. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Series 2024 Bonds need not be given under the Continuing Disclosure Agreement any earlier than the notice (if any) of such redemption is given to the owners of the Series 2024 Bonds pursuant to the Indenture. The City is required to deliver or cause delivery of such Listed Events Disclosure in the same manner as provided for Annual Financial Information and Audited Financial Statements.

(f) The Continuing Disclosure Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, the Continuing Disclosure Agreement shall inure solely to the benefit of the City, the Dissemination Agent, if any, the Trustee and the Beneficial Owners of the Series 2024 Bonds, and shall create no rights in any other person or entity. In the event of a failure of the City to comply with any provision of the Continuing Disclosure Agreement, the Trustee may (and at the request of a Participating Underwriter or the Beneficial Owners of at least 25% in aggregate outstanding principal amount of the Series 2024 Bonds, and upon being indemnified to its satisfaction, shall) or the Beneficial Owner of any Series 2024 Bond may seek specific performance by court order to cause the City to comply with its obligations under the Disclosure Agreement. A default under the Disclosure Agreement shall not be deemed an Event of Default under the Indenture or any other agreement, and the sole remedy under the Disclosure Agreement in the event of any failure of the City or the Dissemination Agent to comply with the Disclosure Agreement shall be an action to compel performance.

(g) The Undertaking of the City pursuant to the Continuing Disclosure Agreement shall be terminated when the City shall no longer have any legal liability for any obligation on or relating to the repayment of the Series 2024 Bonds. The City shall give notice to the MSRB, or shall cause the Dissemination Agent to give such notice, in a timely manner and in Prescribed Form in such event.

(h) The City and the Dissemination Agent may amend the Continuing Disclosure Agreement, and any provision of the Continuing Disclosure Agreement may be waived, if (i) the amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the City or type of business conducted; (ii) the Continuing Disclosure Agreement, as amended, or the provision, as waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; (iii) the amendment or waiver does not materially impair the interests of the Beneficial Owners of the Series 2024 Bonds, as determined either by parties unaffiliated with the City (such as the Trustee) or by an approving vote of the Beneficial Owners of the Series 2024 Bonds holding a majority of the aggregate principal amount of the Series 2024 Bonds (excluding Series 2024 Bonds held by or on behalf of the City or its affiliates) pursuant to the terms of the Indenture at the time of the amendment; or (iv) the amendment or waiver is otherwise permitted by the Rule.

(i) The following terms used under this caption shall have the meanings set forth below:

“Annual Financial Information” means receipts of the Sales and Use Tax for the latest Fiscal Year and for the four previous Fiscal Years.

“Annual Financial Information Disclosure” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in subsection (a) above.

“Audited Financial Statements” means the audited consolidated financial statements of the City, prepared pursuant to generally accepted accounting standards and as described in Exhibit I to the Continuing Disclosure Agreement.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2024 Bonds (including persons holding Series 2024 Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2024 Bonds for federal income tax purposes.

“Business Day” means any day other than a Saturday or Sunday or a day on which banks in the State of Arkansas or in the state in which the Dissemination Agent is located are not open for business.

“Commission” means the U.S. Securities and Exchange Commission.

“Disclosure Representative” means the City’s Finance Director, or his or her designee, or such other person as the City shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean Simmons Bank, Pine Bluff, Arkansas, acting in its capacity as a dissemination agent under the Continuing Disclosure Agreement, or any successor dissemination agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

“EMMA” means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation does not include municipal securities as to which a final official statement has been otherwise provided to the MSRB under the Rule.

“Fiscal Year” means any period of twelve (12) consecutive months adopted by the City as its fiscal year for financial reporting purpose. The Fiscal Year of the City presently ends on December 31 of each year.

“Listed Event” means the occurrence of any of the following events with respect to the Series 2024 Bonds:

- (i) Principal and interest payment delinquencies;
- (ii) Nonpayment-related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) Modifications to rights of security holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution or sale of property securing repayment of the securities, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the City;
- (xiii) The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (xv) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
- (xvi) Default, event of acceleration, termination event, modification of terms, or similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

“Listed Events Disclosure” means dissemination of a notice of a Listed Event as set forth in subsection (e) above.

“MSRB” shall mean the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the 1934 Act.

“Participating Underwriter” means each broker, dealer or municipal securities dealer acting as an underwriter in any primary offering of the Series 2024 Bonds.

“Prescribed Form” means, with regard to the filing of Annual Financial Information, Audited Financial Statements and notices of Listed Events with the MSRB at www.emma.msrb.org (or such other address or addresses as the MSRB may from time to time specify), such electronic format, accompanied by such identifying information, as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of such information.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission (“SEC”) under the Exchange Act, as the same may be amended from time to time.

“State” means the State of Arkansas.

“Undertaking” means the obligations of the City pursuant to subsections (a) and (e) above.

UNDERWRITING

Under a bond purchase agreement entered into by and among the City and Stephens Inc. (the “Underwriter”), the Series 2024 Bonds are being purchased at a purchase price of \$_____ (representing the stated principal amount of the Series 2024 Bonds [less][plus] a net reoffering [discount][premium] of \$_____ and less an underwriting discount of \$_____). The bond purchase agreement provides that the Underwriter will purchase all of the Series 2024 Bonds if any are purchased. The obligation of the Underwriter to accept delivery of the Series 2024 Bonds is subject to various conditions contained in the bond purchase agreement, including the absence of pending or threatened litigation questioning the validity of the Series 2024 Bonds or any proceedings in connection with the issuance thereof, and the absence of material adverse changes in the financial condition of the City.

Mark C. Doramus, Chief Financial Officer of the Underwriter, serves on the Board of Directors of the Trustee.

The Underwriter intends to offer the Series 2024 Bonds to the public initially at the offering prices as set forth on the inside cover page of this Official Statement, which offering prices (or bond yields establishing such offering prices) may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with dealers and other underwriters in offering the Series 2024 Bonds to the public, and may offer the Series 2024 Bonds to such dealers and other underwriters at a price below the public offering price.

The City has agreed to indemnify the Underwriter against certain civil liabilities in connection with the offering and sale of the Series 2024 Bonds, including certain liabilities under federal securities laws.

The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage services. The Underwriter and its affiliates have, from time to time, performed and may in the future perform, various financial advisory, commercial banking, investment banking and swap counterparty services for the City, for which they received or will receive customary fees and expenses. In the ordinary course of their various business activities, the Underwriter and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities, which may include credit default swaps) and financial instruments (including bank loans) for their own accounts and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the City.

TAX MATTERS

General Matters

Federal Income Taxes. In the opinion of Kutak Rock LLP, Bond Counsel, under existing laws, regulations, rulings and judicial decisions, interest on the Series 2024 Bonds (including any original issue discount properly allocable to the owner of a Series 2024 Bond) is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals. The opinion described in the preceding sentence assumes the accuracy of certain representations and compliance by the

City with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the Series 2024 Bonds. Failure to comply with such requirements could cause interest on the Series 2024 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2024 Bonds. The City has covenanted to comply with such requirements. Interest on the Series 2024 Bonds may affect the federal alternative minimum tax imposed on certain corporations.

Bond Counsel has expressed no opinion regarding other federal tax consequences arising with respect to the Series 2024 Bonds.

The accrual or receipt of interest on the Series 2024 Bonds may otherwise affect the federal income tax liability of the owners of the Series 2024 Bonds. The extent of these other tax consequences will depend upon such owner's particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the Series 2024 Bonds, particularly purchasers that are corporations (including S corporations, foreign corporations operating branches in the United States, and certain corporations subject to the federal alternative minimum tax), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of Social Security or Railroad Retirement benefits, taxpayers entitled to claim the earned income credit, taxpayers entitled to claim the refundable credit in Section 36B of the Code for coverage under a qualified health plan, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the Series 2024 Bonds.

Backup Withholding. An owner of a Series 2024 Bond may be subject to backup withholding at the applicable rate determined by statute with respect to interest paid with respect to the Series 2024 Bonds if such owner fails to provide to any person required to collect such information pursuant to Section 6049 of the Code with such owner's taxpayer identification number, furnishes an incorrect taxpayer identification number, fails to report interest, dividends or other "reportable payments" (as defined in the Code) properly, or, under certain circumstances, fails to provide such persons with a certified statement, under penalty of perjury, that such owner is not subject to backup withholding.

Changes in Federal and State Tax Law

From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal tax matters referred to under this heading "TAX MATTERS" or adversely affect the market value of the Series 2024 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Series 2024 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Series 2024 Bonds or the market value thereof would be impacted thereby. Purchasers of the Series 2024 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2024 Bonds, and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigation.

PROSPECTIVE PURCHASERS OF THE SERIES 2022 BONDS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS PRIOR TO ANY PURCHASE OF THE SERIES 2024 BONDS AS TO THE IMPACT OF THE CODE UPON THEIR ACQUISITION, HOLDING OR DISPOSITION OF THE SERIES 2024 BONDS.

State Taxes

Bond Counsel is of the opinion that, under existing law, the interest on the Series 2024 Bonds is exempt from all state, county and municipal taxes in the State of Arkansas.

RATING

S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P"), has assigned a rating of "AA" (Stable outlook) to the Series 2024 Bonds. Such rating reflects only the view of S&P at the time such rating was given, and the City makes no representation as to the appropriateness of such rating. An explanation as to the significance of the above rating may be obtained only from S&P.

The City has furnished S&P certain information and materials relating to the Series 2024 Bonds and the City, some of which have not been included in this Official Statement. Generally, rating agencies base their ratings on such information and materials and investigations, studies and assumptions furnished to and obtained and made by the rating agencies. There is no assurance that a particular rating will be maintained for any given period of time or that it may not be lowered, raised or withdrawn entirely by S&P if, in its judgment, circumstances so warrant. Neither the City nor the Underwriter have undertaken any responsibility to oppose any such revision or withdrawal. Any downward change in or withdrawal of a rating may have an adverse effect on the market price and marketability of the Series 2024 Bonds. No application has been made to any Rating Agency other than S&P for a rating on the Series 2024 Bonds.

LEGAL MATTERS

Legal Opinions. Legal matters incident to the authorization and issuance of the Series 2024 Bonds are subject to the unqualified approving opinion of Kutak Rock LLP, Little Rock, Arkansas, Bond Counsel, a copy of whose approving opinion will be delivered with the Series 2024 Bonds and a form of which is attached hereto as Appendix A. Certain legal matters will be passed upon for the City by its counsel, Kit Williams, Esq., City Attorney.

Litigation. There is no litigation pending seeking to restrain or enjoin the issuance or delivery of the Series 2024 Bonds or questioning or affecting the legality of the Series 2024 Bonds or the proceedings and authority under which the Series 2024 Bonds are to be issued, or questioning the right of the City to issue the Series 2024 Bonds. There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the City in any way which could have a material adverse effect on the Sales and Use Tax or the City's ability to pay debt service with respect to the Series 2024 Bonds.

MISCELLANEOUS

Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or owners of any of the Series 2024 Bonds.

ACCURACY AND COMPLETENESS OF OFFICIAL STATEMENT

The information contained in this Official Statement has been taken from sources considered to be reliable, but is not guaranteed. To the best of the knowledge of the City, this Official Statement does not include any untrue statement of a material fact, nor does it omit the statement of any material fact required to be stated herein, or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading.

The execution and delivery of this Official Statement has been duly authorized by the City of Fayetteville, Arkansas.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

APPENDIX A

Proposed Form of Bond Counsel Opinion

Upon delivery of the Series 2024 Bonds in definitive form, Kutak Rock LLP, Little Rock, Arkansas, proposes to deliver its approving opinion in substantially the following form:

_____, 2024

City of Fayetteville, Arkansas
Fayetteville, Arkansas

Simmons Bank, as Trustee
Pine Bluff, Arkansas

Stephens Inc.
Fayetteville, Arkansas

\$15,000,000*
City of Fayetteville, Arkansas
Sales and Use Tax Capital Improvement Bonds
Series 2024

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance and sale by the City of Fayetteville, Arkansas (the “City”), a political subdivision of the State of Arkansas, of its \$15,000,000* Sales and Use Tax Capital Improvement Bonds, Series 2024 (the “Series 2024 Bonds”).

The Series 2024 Bonds are being issued pursuant to the provisions of the Constitution and laws of the State of Arkansas, including, particularly, Amendment 62 and Arkansas Code Annotated (1998 Repl. & Supp. 2023) §§14-164-301 *et seq.* (as from time to time amended, the “Local Government Bond Act”), pursuant to Ordinance No. [REDACTED] of the City, duly adopted and approved on August [REDACTED], 2024 (the “Authorizing Ordinance”), and pursuant to a Trust Indenture dated as of August 1, 2019, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, and by a Second Supplemental Trust Indenture dated as of October 1, 2024 (as supplemented and amended, the “Indenture”), by and between the City and Simmons Bank, as trustee (the “Trustee”). Reference is hereby made to the Indenture and to all indentures supplemental thereto for the provisions, among others, with respect to the conditions for the issuance of parity indebtedness by the City, with respect to the nature and extent of the security for the Series 2024 Bonds, the rights, duties and obligations of the City, the Trustee and the Holders of the Series 2024 Bonds, and the terms upon which the Series 2024 Bonds are issued and secured.

At a special election held April 9, 2019, called in accordance with the Local Government Bond Act pursuant to Ordinance No. 6216 of the City, adopted on December 18, 2018 (the “Election Ordinance”), the issuance of capital improvement bonds secured by the Sales and Use Tax (as defined in the Indenture) was approved by a majority of the qualified electors of the City voting on each of the ten questions set forth on the ballot in the respective principal amounts and for the specified purposes therein described.

Reference is made to an opinion of even date herewith of Kit Williams, Esq., City Attorney, a copy of which is on file with the Trustee, with respect, among other matters, to the status and valid existence of the City, the power of the City to adopt the Election Ordinance and the Authorizing Ordinance and to enter into and perform its obligations under the Indenture, the valid adoption of the Election Ordinance and the Authorizing Ordinance, and the due authorization, execution and delivery of the Indenture by the City, and with respect to the Indenture being enforceable upon the City.

* Preliminary; subject to change.

We have examined the law and such certified proceedings and other papers as we have deemed necessary to render this opinion. As to questions of fact material to our opinion, we have relied upon the representations of the City contained in the Election Ordinance, the Authorizing Ordinance and the Indenture and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The City is duly created and validly existing as a municipal corporation of the State of Arkansas. Pursuant to the Constitution and laws of the State of Arkansas, including, particularly, Amendment 62 and the Local Government Bond Act, the City is empowered to adopt the Election Ordinance and the Authorizing Ordinance, to execute and deliver the Indenture, to perform the agreements on its part contained therein, and to issue the Series 2024 Bonds.

2. The Authorizing Ordinance has been duly adopted by the City and constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms.

3. The Indenture has been duly authorized, executed and delivered by the City and is a valid and binding obligation of the City enforceable upon the City in accordance with its terms.

4. The Series 2024 Bonds have been duly authorized, executed and delivered by the City and are valid and binding limited obligations of the City payable from and secured by a valid lien on and pledge of the Trust Estate (as defined in the Indenture), including receipts of the Sales and Use Tax (as defined in the Indenture), in the manner and to the extent provided in the Indenture. Such lien and pledge are made on a parity basis with the existing lien and pledge of the Trust Estate securing the City's (i) Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A, and (ii) Sales and Use Tax Capital Improvement Bonds, Series 2022. The City is duly authorized to pledge such Trust Estate, and no further action on the part of the City or any other party is required to perfect the same or the interest of the owners of the Series 2024 Bonds therein.

5. The Sales and Use Tax has been validly adopted in accordance with the Constitution and laws of the State of Arkansas, including Amendment 62 and the Local Government Bond Act, and may be validly pledged to secure the Series 2024 Bonds.

6. Interest on the Series 2024 Bonds (including any original issue discount properly allocable to the owner of a Series 2024 Bond) is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals. The opinions described in the preceding sentence assume the accuracy of certain representations and compliance by the City with covenants designed to satisfy the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be met subsequent to the issuance of the Series 2024 Bonds. Failure to comply with such requirements could cause interest on the Series 2024 Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2024 Bonds. The City has covenanted to comply with such requirements. We express no opinion regarding other federal tax consequences arising with respect to the Series 2024 Bonds.

7. The interest on the Series 2024 Bonds is exempt from all state, county and municipal taxes in the State of Arkansas.

8. The Series 2024 Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended, in connection with the offer and sale of the Series 2024 Bonds.

It is to be understood that the rights of the registered owners of the Series 2024 Bonds and the enforceability of the Series 2024 Bonds, the Authorizing Ordinance and the Indenture may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

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APPENDIX B

DEFINITIONS OF CERTAIN TERMS

The following are definitions of certain terms used in this Official Statement:

“Account” means an Account established by Article V of the Indenture.

“Act” or “Local Government Bond Act” means the Local Government Bond Act of 1985, codified as Arkansas Code Annotated (1998 Repl. & Supp. 2023) Sections 14-164-301 *et seq.*, as from time to time amended.

“Additional Bonds” means Bonds in addition to the Series 2019A Bonds, the Series 2022 Bonds and the Series 2024 Bonds which are issued under the provisions of the Indenture.

“Amendment 62” means Amendment No. 62 to the Constitution of Arkansas, approved by the voters of the State on November 6, 1984.

“Annual Debt Service” means, with respect to all or any particular amount of Bonds, the Debt Service for any particular Fiscal Year required to be paid or set aside during such Fiscal Year, less the amount of such payment which is provided from the proceeds of Bonds or from sources other than Sales and Use Tax receipts.

“Authorized Representative” means either the Mayor or the Finance Director of the City and such additional persons as from time to time may be designated to act on behalf of the City by a Certificate furnished to the Trustee containing the specimen signature thereof and executed on behalf of the City by its Mayor.

“Authorizing Ordinance” means Ordinance No. [REDACTED], adopted by the City on August [REDACTED], 2024, which authorized the issuance of the Series 2024 Bonds pursuant to the Indenture.

“Beneficial Owner” means any Person who acquires beneficial ownership interest in a Bond held by the Securities Depository. In determining the Beneficial Owner of any Bond, the Trustee may rely exclusively upon written representations made and information given to the Trustee by the Securities Depository or its Participants with respect to any Bond held by the Securities Depository in which a beneficial ownership interest is claimed.

“Bond Counsel” means any firm of nationally recognized municipal bond counsel selected by the City and acceptable to the Trustee.

“Bond Fund” means the fund by that name created and established in the Indenture.

“Bonds” means the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds and all Additional Bonds issued by the City pursuant to the Indenture.

“Book-Entry System” means the book-entry system maintained by the Securities Depository and described in the Indenture.

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the city in which the principal corporate trust office of the Trustee is located are authorized or required by law or executive order to close, or (c) a day on which the New York Stock Exchange or the Securities Depository is closed.

“Certificate” means a document signed by an Authorized Representative of the City attesting to or acknowledging the circumstances or other matters therein stated.

“City” means the City of Fayetteville, Arkansas, a municipality and political subdivision under the laws of the State of Arkansas.

“City Clerk” means the person holding the office and performing the duties of the City Clerk of the City.

“Closing Date” means, with respect to any series of Bonds, the date upon which there is an exchange of such series of Bonds for the proceeds representing the purchase price for such series of Bonds by the Original Purchaser or Purchasers thereof.

“Code” means the Internal Revenue Code of 1986, as from time to time amended, and applicable regulations issued or proposed thereunder.

“Completion Date” means the date upon which a particular Project (or portion thereof) is first ready for normal continuous operation, as determined by the City’s Finance Director.

“Continuing Disclosure Agreement” means, collectively, each Continuing Disclosure Agreement between City and the Dissemination Agent, dated the date of issuance and delivery of a series of Bonds, as originally executed and as amended from time to time in accordance with the terms thereof.

“Costs of Issuance” means all items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the Bonds, including, but not limited to, underwriting discounts, fees and expenses, election expenses, publication expenses, expenses of printing, reproducing, filing and recording documents, initial fees and charges of the Trustee and any Paying Agent, fees and expenses for legal, accounting and other professional services, rating fees, costs of securing any credit enhancement for the Bonds, costs of execution, transportation and safekeeping of the Bonds, and other costs, charges and fees incurred in connection with the foregoing.

“Costs of Issuance Fund” means the fund by that name created and established in the Indenture.

“Debt Service” means, with respect to all or any particular amount of Bonds, the total as of any particular date of computation and for any particular period of the scheduled amount of interest and amortization of principal payable on such Bonds, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

“Dissemination Agent” means the entity named as dissemination agent in each Continuing Disclosure Agreement entered into in connection with the issuance of a series of Bonds.

“Election Ordinance” means Ordinance No. 6216, adopted by the City Council on December 18, 2018, pursuant to which there was submitted to the qualified electors of the City the ten questions relating to the issuance of the Bonds.

“Event of Default” means any event of default specified in Section 801 of the Indenture.

“Fiscal Year” means the 12-month period used, at any time, by the City for accounting purposes, which may be the calendar year.

“Fund” means a fund established by the Indenture.

“Government Securities” means (a) direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America, (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

“Holder” or “Bondholder” or “owner of the Bonds” means the registered owner of any Bond.

“Indenture” means the Trust Indenture dated as of August 1, 2019, as supplemented and amended by the First Supplemental Trust Indenture dated as of June 1, 2022, and as supplemented and amended by the Second Supplemental Trust Indenture dated as of October 1, 2024, all between the City and the Trustee, pursuant to which the Bonds are issued, and any amendments and supplements thereto.

“Investment Securities” means, if and to the extent the same are at the time legal for investment of Funds and Accounts held under the Indenture:

- (a) cash (fully insured by the Federal Deposit Insurance Corporation);
- (b) Government Securities;
- (c) Federal Housing Administration debentures;
- (d) The obligations of the following government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

- 1) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
 - 2) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes;
 - 3) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; and
 - 4) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
- (e) Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 365 days) of any bank the short-term obligations of which are rated "A-1+" or better by S&P and "Prime-1" by Moody's;
- (f) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least \$15 million;
- (g) Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's;
- (h) Money market funds rated "Aam" or "AAm-G" by S&P, or better and if rated by Moody's rated "Aa2" or better;
- (i) "State Obligations", which means:
- 1) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least "A3" by Moody's and at least "A-" by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated;
 - 2) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated "A-1+" by S&P and "MIG-1" by Moody's; and
 - 3) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state or state agency described in (b) above and rated "AA-" or better by S&P and "Aa3" or better by Moody's;
- (j) Pre-refunded municipal obligations rated "AAA" by S&P and "Aaa" by Moody's meeting the following requirements:
- 1) the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;
 - 2) the municipal obligations are secured by cash or U.S. Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;
 - 3) the principal of and interest on the U.S. Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public

accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations (“Verification Report”);

- 4) the cash or U.S. Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;
- 5) no substitution of a U.S. Treasury Obligation shall be permitted except with another U.S. Treasury Obligation and upon delivery of a new Verification Report; and
- 6) the cash or U.S. Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

“Mayor” means the person holding the office and performing the duties of the Mayor of the City.

“Original Purchaser” means the first purchaser(s) of a series of the Bonds from the City.

“Outstanding” means, as of any date of computation, Bonds theretofore or thereupon being delivered under the Indenture, except:

- (a) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation;
- (b) Bonds deemed to be paid in accordance with Article VII of the Indenture; and
- (c) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture.

“Parks Project” means the acquisition, design, construction and equipping of certain City parks systems and related improvements, as described in the Election Ordinance and eligible for financing with the proceeds of the Bonds in aggregate principal amount not to exceed \$26,405,000.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository in the Book-Entry System, as such listing of Participants exists at the time of such reference.

“Paying Agent” means any bank or trust company named by the City as the place at which the principal of and premium, if any, and interest on the Bonds are payable.

“Person” means any natural person, firm, association, corporation, limited liability company, partnership, joint stock company, joint venture, trust, unincorporated organization or firm, or a government or any agency or political subdivision thereof or other public body.

“Projects” means, collectively, the Streets Project and the Parks Project.

“Project Costs” means, to the extent permitted by the Act or other applicable laws, with respect to the Projects, all costs of planning, designing, purchasing, acquiring, constructing, improving, enlarging, extending, repairing, financing and placing in operation, including obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred by or on behalf of the City and which shall include, but shall not be limited to:

- (a) interest accruing in whole or in part on the Bonds prior to and during construction of the Projects, including all amounts required by the Indenture to be paid from the proceeds of the Bonds into the Bond Fund;
- (b) preliminary investigation and development costs, engineering fees, contractors’ fees, labor costs, the cost of materials, equipment, utility services and supplies, costs of obtaining permits, licenses and approvals, costs of real property, insurance premiums, legal and financing fees and costs, administrative and general costs, and all other costs properly allocable to the acquisition, construction and equipping of the Projects and placing the same in operation;

(c) all costs relating to injury and damage claims arising out of the acquisition, construction or equipping of the Projects;

(d) all other costs incurred in connection with, and properly allocable to, the acquisition, construction and equipping of the Projects; and

(e) amounts to pay or reimburse the City or any City fund for expenses of the City incident and properly allocable to such planning, designing, purchasing, acquiring, constructing, improving, enlarging, extending, repairing, financing and placing in operation of the Projects.

“Project Fund” means the fund by that name created and established in the Indenture.

“Rating Agency” means Moody’s Investors Service, S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, or Fitch, Inc., and their respective successors and assigns. If any such corporation ceases to act as a securities rating agency, the City may appoint any nationally recognized securities rating agency as a replacement.

“Rebate Fund” means the fund by that name created and established in the Indenture.

“Record Date” means the fifteenth day of the calendar month preceding the calendar month in which an interest payment date on the Bonds occurs.

“Redemption Fund” means the fund by that name established in the Indenture.

“Requisition” means a written requisition of the City, consecutively numbered, signed by an Authorized Representative including, without limitation, the following with respect to each payment requested:

- (i) the particular Project to which it relates;
- (ii) the name of the Person or party to whom payment is to be made and the purpose of the payment;
- (iii) the amount to be paid thereunder;
- (iv) that such amount has not been previously paid by the City and is justly due and owing to the Person(s) named therein as a proper payment or reimbursement of a Project Cost; and
- (v) that no Event of Default exists under the Indenture and that, to the knowledge of the Authorized Representative, no event has occurred and continues which with notice or lapse of time or both would constitute an Event of Default under the Indenture.

“Revenue Fund” means the fund by that name created and established in the Indenture.

“Sales and Use Tax” means the one percent (1.00%) city-wide sales and use tax authorized under the Act which has been levied within the City pursuant to the Election Ordinance and approved by the voters of the City, the collection of which tax commenced on October 1, 2019. Receipts of the Sales and Use Tax are pledged to the payment of Debt Service on the Bonds.

“Securities Depository” means The Depository Trust Company, New York, New York, or its nominee, and its successors and assigns, or any other depository institution appointed by the City or the Trustee to act as depository for the Bonds in connection with the Book-Entry System.

“Series 2019A Bonds” means the City’s Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A, issued under and secured by this Indenture in the original aggregate principal amount of \$124,425,000.

“Series 2022 Bonds” means the City’s Sales and Use Tax Capital Improvement Bonds, Series 2022, issued under and secured by this Indenture in the original aggregate principal amount of \$74,340,000.

“Series 2024 Bonds” means the City’s Sales and Use Tax Capital Improvement Bonds, Series 2024, issued under and secured by this Indenture in the original aggregate principal amount of \$15,000,000*.

“State” means the State of Arkansas.

“Streets Project” means the acquisition, design, construction, reconstruction, repair, resurfacing, straightening and widening of certain City streets and related improvements, as described in the Election Ordinance and eligible for financing with the proceeds of the Bonds in aggregate principal amount not to exceed \$73,925,000.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture.

“Surplus Tax Receipts” shall have the meaning ascribed to such term in Section 503 of the Indenture.

“Tax Compliance Agreement” means with respect to any series of tax-exempt Bonds, that Tax Compliance Agreement of the City relating to maintenance of the excludability of interest on such Bonds from gross income for federal income tax purposes, delivered in connection with the issuance of such series of Bonds.

“Trustee” means the banking corporation or association designated as Trustee in the Indenture, and its successor or successors as such Trustee. The original Trustee is Simmons Bank, Pine Bluff, Arkansas.

“Trust Estate” means the property described in the granting clauses of the Indenture.

* Preliminary; subject to change.

APPENDIX C

THE SALES AND USE TAX

Sales Tax. The sales tax portion of the Sales and Use Tax is generally levied upon the gross proceeds and receipts derived from all sales to any Person within the City of the following:

- (a) Tangible personal property;
- (b) Specified digital products;
- (c) Digital codes;
- (d) Natural or artificial gas, electricity, water, ice, steam, or any other tangible personal property sold as a utility or provided as a public service;
- (e) Any intrastate, interstate, and international telecommunications service that is sourced in the State, any ancillary service, and any installation, maintenance, or repair service of telecommunications equipment;
- (f) Service of furnishing rooms, suites, condominiums, townhouses, rental houses, or other accommodations by hotels, apartment hotels, lodging houses, tourist camps, tourist courts, property management companies, accommodations intermediaries, or any other provider of accommodations to transient guests;
- (g) Service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers, paying customers or users, including all service charges and rental charges, and including installation and repair service charges and any other charges having any connection with the providing of the said services; provided, however, sales taxes are not levied on services purchased by radio or television providers for use in providing their services;
- (h) Service of initial installation, alteration, addition, cleaning, refinishing, replacement, and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radios, jewelry, watches and clocks, engineering instruments, medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheet metal, mechanical tools, and shop equipment; however, the tax does not apply to (A) the repair or maintenance of railroad parts, railroad cars, and equipment brought into the City solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within the City; (B) services performed on watches and clocks which are received by mail or common carrier from outside the State and which, after the service is performed, are returned to points outside the State; (C) the service of alteration, addition, cleaning, refinishing, replacement or repair of commercial jet aircraft or commercial jet aircraft components or subcomponents; (D) the repair or remanufacture of industrial metal rollers or platens that have a remanufactured nonmetallic material covering on all or a part of the roller or platen surface which are brought into the State solely and exclusively for the purpose of being repaired or remanufactured in this State and are then shipped back to the state of origin; (E) services performed by a temporary or leased employee or other contract laborer on items owned or leased by the employer; or (F) the initial installation, alteration, addition, cleaning, refinishing, replacement or repair of nonmechanical, passive or manually operated components of buildings or other improvements or structures affixed to real estate;
- (i) Service of providing transportation or delivery of money, property or valuables by armored car; service of providing cleaning or janitorial work; service of pool cleaning and servicing; pager services; telephone answering services; landscaping and non-residential lawn care services; service of parking a motor vehicle or allowing a motor vehicle to be parked; service of storing a motor vehicle; service of storing furs; service of providing indoor tanning at a tanning salon; wrecker and towing services; service of collecting and disposing of solid waste; parking lot and gutter cleaning services; dry cleaning and laundry services; industrial laundry services; body piercing, tattooing, and electrolysis services; pest control services; security and alarm monitoring services; boat storage and docking fees; service of furnishing camping spaces or trailer spaces at public or privately owned campgrounds, except for federal campgrounds, on less than a month-to-month basis; locksmith services; and pet grooming and kennel services;
- (j) Printing of all kinds, types, and characters, including the service of overprinting, and photography of all kinds;
- (k) Tickets or admissions to places of amusement, or to athletic, entertainment or recreational events, or fees for access to or the use of amusement, entertainment, athletic or recreational facilities; provided, however,

sales taxes are not levied on membership dues paid to a hunting or fishing club that are paid to obtain access to land for the primary purpose of hunting or fishing;

(l) Dues and fees to health spas, health clubs, and fitness clubs; and dues and fees to private clubs which hold any permit from the Alcoholic Beverage Control Board allowing the sale, dispensing, or serving of alcoholic beverages of any kind on the premises; provided, however, sales taxes are not levied on membership dues paid to a hunting or fishing club that are paid to obtain access to land for the primary purpose of hunting or fishing;

(m) Beer, wine, liquor, or any intoxicating beverages;

(n) Proceeds derived from the business of owning, operating, or leasing of coin-operated pinball machines, coin-operated music machines, coin-operated mechanical games, and similar devices;

(o) Contracts, including service contracts, maintenance agreements and extended warranties, which in whole or in part provide for the future performance of or payment for services which are subject to the sales tax;

(p) Any device used in playing bingo and any charge for admittance to facilities or for the right to play bingo or other games of chance;

(q) Computer software, including prewritten computer software, but not proceeds from the sale of a software maintenance contract;

(r) Service of repairing or maintaining computer equipment or hardware;

(s) Prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service;

(t) Lease or rental of a portable toilet on a short-term or a long-term basis, and any service associated with the lease or rental of a portable toilet provided by the lessor or otherwise;

(u) Fishing guide services;

(v) New or used heavy equipment; and

(w) Withdrawals from stock.

Exemptions from Sales Tax. As summarized below, several types of transactions have been exempted from the sales tax by the General Assembly of the State. Some of the current exemptions include the sale of:

(a) Tangible personal property, specified digital products, a digital code, or services by churches, except where such organizations may be engaged in business for profit;

(b) Tangible personal property, specified digital products, a digital code, or services by charitable organizations, except where such organizations may be engaged in business for profit;

(c) Foodstuffs in public, common, high school, or college cafeterias and lunch rooms operated primarily for teachers and pupils, and not operated primarily for the public or for profit;

(d) Newspapers;

(e) Property or services to the United States Government; motor vehicles and adaptive equipment to disabled veterans who have purchased said vehicles or adaptive equipment with financial assistance of the United States Department of Veterans Affairs; specified digital products, digital code, or tangible personal property to and leasing to the Salvation Army, Heifer Project International, Inc., Habitat for Humanity, Arkansas Symphony Orchestra Society, Inc., the Arkansas Black Hall of Fame Foundation, Inc., the Arkansas Scent Dog Association, Inc., the Boy Scouts of America, the Girl Scouts of America or any of the Scout Councils in the State, to the Boys & Girls Club of America, to the Poets' Roundtable of Arkansas, to 4-H Clubs and FFA Clubs, to the Arkansas 4-H Foundation, to the Arkansas Future Farmers of America Foundation, to the Arkansas Future Farmers of America Association, to a parent teacher organization, a parent teacher association, or a similar nonprofit organization that is affiliated with a public school, and to the Disabled American Veterans Organization;

(f) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State; special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft and railroads; dyed distillate special fuel on which a tax has been paid; and biodiesel fuel;

- (g) Property resales to persons regularly engaged in the business of reselling the articles purchased;
- (h) Advertising space in newspapers and publications, billboard advertising services, and advertising on public transit buses;
- (i) Publications sold through regular subscription;
- (j) Gate admission at State, district, county, or township fairs or at any rodeo if the receipts derived from gate admissions to the rodeo are used exclusively for the improvement, maintenance, and operation of such rodeo, and if no part of the net earnings thereof inures to the benefit of any private stockholder or individual;
- (k) Property or services which the State is prohibited by the United State Constitution and the laws of the United States or by the Arkansas Constitution from taxing or further taxing;
- (l) Isolated sales not made by an established business;
- (m) Cotton, seed cotton, lint cotton, baled cotton, whether compressed or not, or cotton seed in its original condition; seed for use in commercial production of an agricultural product or of seed; raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user; livestock, poultry, poultry products, and dairy products of producers owning not more than five cows; and baby chickens;
- (n) Foodstuffs to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy;
- (o) Rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs;
- (p) Tangible personal property, specified digital products, digital code, or services provided to any hospital or sanitarium operated for charitable and nonprofit purposes or any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium;
- (q) Used tangible personal property when the used property was (1) traded in and accepted by the seller as part of the sale of other tangible personal property; and (2) the Arkansas Gross Receipts Tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property; provided, however, this exemption does not apply to transactions involving used automobiles or used aircraft;
- (r) Unprocessed crude oil;
- (s) Tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at (i) new manufacturing or processing plants or facilities in the State or (ii) existing manufacturing or processing plants or facilities in the State if the tangible personal property is used to replace existing machinery and equipment at such plant or facilities;
- (t) Property consisting of machinery and equipment required by State or federal law or regulations to be installed and utilized by manufacturing or processing plants or facilities, cities or towns in the State in order to prevent or reduce air and/or water pollution or contamination;
- (u) Electricity used in the manufacture of aluminum metal by the electrolytic reduction process;
- (v) Articles sold on the premises of the Arkansas Veterans Home;
- (w) Automobile parts which constitute "core charges," which are received for the purpose of securing a trade-in for the article purchased;
- (x) Tangible personal property lawfully purchased with food stamps, food coupons, food instruments or vouchers in connection with certain Federal programs;
- (y) Parts or other tangible personal property incorporated into or which become a part of commercial jet aircraft components or subcomponents, and the services required to incorporate the parts or other tangible personal property into a part of commercial jet aircraft components or subcomponents;
- (z) Transfer of fill material by a business engaged in transporting or delivering fill material;

- (aa) Long-term leases, thirty (30) days or more, of commercial trucks used for interstate transportation of goods under certain conditions;
- (bb) Catalysts, chemicals, reagents, and solutions which are consumed or used in producing, manufacturing, fabricating, processing or finishing articles of commerce at manufacturing or processing plants in the State, and by manufacturing or processing plants or facilities in the State to prevent or reduce air or water pollution or contamination;
- (cc) Fuel packaging materials sold to persons engaged in the business of processing hazardous and non-hazardous waste materials into fuel products at an approved site, and machinery and equipment, including analytical equipment and chemicals used directly in processing hazardous and non-hazardous waste materials into fuel products at an approved site;
- (dd) Goods, wares, merchandise, or tangible personal property withdrawn or used from an established business or from the stock in trade of established reserves for consumption or use in an established business or by any other person if the goods, wares, merchandise or other tangible personal property withdrawn or used is donated to a National Guard Member, emergency service worker, or volunteer providing services to a county which has been declared a disaster area by the Governor;
- (ee) Tangible personal property, specified digital products, or digital code sold by or to a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service; services to a car wash operator; and ancillary services by a car wash operator;
- (ff) Tangible personal property sold at a concession stand operated by a nonprofit youth organization if all of the proceeds go to that organization;
- (gg) New and used farm machinery and equipment;
- (hh) Feedstuffs used in the commercial production of livestock or poultry;
- (ii) Agricultural fertilizer, agricultural limestone, agricultural chemicals and water purchased from a public surface-water delivery project to reduce or replace water used for in-ground irrigation or to reduce depletion of groundwater for agriculture;
- (jj) Prescription drugs by licensed pharmacists, hospitals or physicians, and oxygen sold for human use on prescription of a licensed physician;
- (kk) Vessels, barges and towboats of at least fifty (50) tons load displacement and parts and labor used in the repair and construction of the same;
- (ll) Bagging and other packaging and tie materials sold to and used by cotton gins in the State for packaging and/or tying baled cotton, twine which is used in the production of tomato crops, and expendable supplies for farm machinery used for baling, tying, wrapping, or sealing animal feed products;
- (mm) Aircraft held for resale and used for rental or charter, whether by a business or an individual for a period not to exceed one year from the date of purchase of aircraft;
- (nn) Motor vehicles sold to municipalities, counties, school districts, and State supported colleges and universities;
- (oo) School buses sold to school districts and, in certain cases, to other purchasers providing school bus service to school districts;
- (pp) Sale of tickets or admissions, by municipalities and counties, to places of amusement, to athletic entertainment, recreational events, or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, admissions, dues or fees;
- (qq) Tickets for admission to athletic events and interscholastic activities of public and private elementary and secondary schools in the State and tickets for admission to athletic events at public and private colleges and universities in the State;
- (rr) Property or sales to all orphans' homes, or children's homes, which are not operated for profit and whether operated by a church, religious organization or other benevolent charitable association;

- (ss) Property or services to humane societies which are not operated for profit;
- (tt) New automobiles to a veteran of the United States Armed Services who is blind as a result of a service connected injury;
- (uu) The first 500 kilowatt hours of electricity per month and the total franchise taxes billed to each residential customer whose household income is less than \$12,000 per year;
- (vv) Motor fuels to owners or operators of motor buses operated on designated streets according to regular schedule and under municipal franchise which are used for municipal transportation purposes;
- (ww) Insulin and test strips for testing blood sugar levels in humans;
- (xx) New motor vehicles purchased by nonprofit organizations and used for the performance of contracts with the Department of Human Services, and new motor vehicles purchased with Federal Transit Administration funds if (i) the vehicles meet minimum specifications of State purchasing law, and (ii) the vehicles are used for transportation under the Department of Human Services' programs for the aging, disabled, mentally ill, and children and family services;
- (yy) Foodstuffs to nonprofit agencies;
- (zz) Tangible personal property consisting of forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites and which are destroyed or consumed during the manufacture of the item;
- (aaa) Natural gas used as a fuel in the process of manufacturing glass;
- (bbb) Sales to the Community Service Clearinghouse, Inc. of Fort Smith;
- (ccc) Substitute fuel used in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at manufacturing facilities or processing plants in the State;
- (ddd) Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce;
- (eee) Parts or other tangible personal property which become a part of railroad parts, railroad cars and equipment brought into the State for the purpose of being repaired, refurbished, modified or converted within the State;
- (fff) Gas produced from biomass and sold for the purpose of generating steam, hot air or electricity to be sold to the gas producer;
- (ggg) Machinery, new and used equipment, and related attachments that are sold to or used by a person engaged primarily in the harvesting of timber;
- (hhh) Prescriptive durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical equipment;
- (iii) Fire protection and emergency equipment to be owned by and exclusively used by a volunteer fire department, and supplies and materials to be used in the construction and maintenance of volunteer fire departments;
- (jjj) Electricity and natural gas to qualified steel, wall and floor tile manufacturers;
- (kkk) Certain new and used trucks to be engaged in interstate commerce;
- (lll) Textbooks, library book and other instructional materials if purchased by State school districts or public schools or by the State for free distribution to State school districts or public schools;
- (mmm) Electricity used for the production of chlorine and other chemicals using a chlor-alkali manufacturing process;
- (nnn) Livestock reproduction equipment and substances;
- (ooo) Tangible personal property, specified digital products, digital code, or services to a qualified museum or its contractor or agent if such property is to be used in the construction, repair, expansion, or operation of the qualified museum facility;
- (ppp) Natural gas and electricity in the manufacturing of tires;

- (qqq) Thermal imaging equipment purchased by a county government for use by law enforcement aircraft;
- (rrr) During the first weekend in August of each year only, items of clothing costing less than \$100, clothing accessories and equipment costing less than \$50, school art supplies, school instructional materials and school supplies;
- (sss) Sale, lease or rental of kegs used to sell beer at wholesale by a wholesale manufacturer of beer;
- (ttt) Electricity, liquefied petroleum gas and natural gas used by grain drying and storage facilities, qualifying agricultural structures and qualifying aquaculture and horticulture equipment;
- (uuu) Dental appliances sold to or by dentists, orthodontists, oral surgeons, maxillofacial surgeons and endodontists;
- (yyy) A portion of the acquisition price of new manufactured homes and modular homes;
- (xxx) New and used mobile homes and used manufactured homes and modular homes;
- (yyy) Telephone instruments sent into the State for refurbishing or repair and then shipped back to the state of origin;
- (zzz) Industrial metal rollers sent into the State for refurbishing or repair and then shipped back to the state of origin;
- (aaaa) Repair parts and labor for pollution control machinery and equipment;
- (bbbb) Sales by commercial farmers of certain baling twine, net wrap, silage wrap and similar products;
- (cccc) Sales of utilities used by qualifying agricultural and horticultural equipment;
- (dddd) Sales of utilities used by grain drying and storage facilities;
- (eeee) Sales of a service providing for the electronic transmission of a drug prescription directly to a pharmacy, including without limitation services provided directly by an electronic prescription technology company or indirectly through a pharmacy software company or pharmacy management system;
- (ffff) Sales of aircraft within the State if the aircraft will be based outside of the State;
- (gggg) Sales of a washer-extractor required by State law to a fire department or intergovernmental council of a county;
- (hhhh) Sales of water used exclusively in the operation of a poultry farm;
- (iiii) Sales of coins or currency or bullion;
- (jjjj) Sales of new or used mortality composting devices to a person engaged in the commercial production of livestock or poultry; and
- (kkkk) Sales of (1) data center equipment; (2) eligible data center costs; (3) services purchased for the purpose of and in conjunction with developing, acquiring, constructing, expanding, renovating, refurbishing, and operating a qualified data center; and (4) electricity used by a qualified data center.

Reference is made to "The Arkansas Gross Receipts Act of 1941," Title 26, Chapter 52 of the Arkansas Code of 1987 Annotated, for more information concerning the sales tax.

Use Tax. The use tax portion of the Sales and Use Tax is levied on every person for the privilege of storing, using, distributing or consuming within the State any article of tangible personal property, specified digital product, digital code or taxable service purchased for storage, use, distribution, or consumption within the State. The use tax applies to the use, distribution, storage or consumption of every article of tangible personal property, specified digital product, digital code, or taxable service, except as hereinafter provided. The use tax is levied on the following described tangible personal property:

- (a) Property of motor carriers consisting of tractors, trailers, semitrailers, trucks, buses, and other rolling stock, including replacement tires, used directly in the transportation of persons or property in intrastate or interstate common carrier transportations;
- (b) Property (except fuel) of railroads consumed in the operation of railroad rolling stock;

(c) Pipelines, including transmission lines and pumping or pressure control equipment used directly in or connected to the primary pipeline facility engaged in intrastate or interstate common carrier transportation of property;

(d) Property of airlines consisting of airplanes and navigation instruments used directly in or becoming a part of flight aircraft engaged in the transportation of persons or property in regular scheduled intrastate or interstate common carrier transportation;

(e) Property of public telephone and telegraph companies consisting of exchange equipment, lines, boards, and all accessory devices used directly in and connected to the primary facility engaged in the transmission of messages;

(f) Property of gas companies consisting of transmission and distribution pipelines and pumping or pressure control and equipment used in connection therewith used directly in a primary pipeline facility for the purpose of transporting and delivering natural gas;

(g) Property of water companies consisting of transmission and distribution lines, pumping machinery and controls used in connection therewith and cleaning or treating equipment of a primary water distribution system;

(h) Property of public electric power companies consisting of all machinery and equipment including reactor cores and related accessory devices used in the generation and production of electric power and energy, and transmission facilities consisting of the lines, including poles, towers, and other supporting structures, transmitting electric power and energy together with substations located on or attached to such lines;

(i) Computer software and the service repairing or maintaining computer equipment or hardware in any form;

(j) Tangible personal property, specified digital products, digital code, and services provided to financial institutions; and

(k) Prepaid calling service or a prepaid wireless calling service and the recharge of a prepaid calling service or a prepaid wireless calling service.

Exemptions from Use Tax. Some of the property and services exempted from the use tax by the General Assembly of the State is as follows:

(a) Property or services, the storage, use, distribution, or consumption of which the State is prohibited from taxing under the Constitution or laws of the United States of America or the State;

(b) Sales of tangible personal property, specified digital products, digital code, or services on which the sales tax under the Arkansas Gross Receipts Act of 1941 is levied;

(c) Tangible personal property, specified digital products, digital code, and services specifically exempted from taxation under the Arkansas Gross Receipts Act of 1941;

(d) Feedstuffs used in the commercial production of livestock or poultry in the State;

(e) Unprocessed crude oil;

(f) Machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at manufacturing or processing plants or facilities in the State, including facilities and plants for manufacturing feed, processing of poultry and/or eggs and livestock and the hatching of poultry and such equipment is either (1) purchased to create or expand manufacturing or processing plants in the State, (2) purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing or packaging of articles of commerce at manufacturing or processing plants in the State, or (3) required by State or federal laws, rules or regulations to be installed and utilized by manufacturing or processing plants to prevent or reduce air and/or water pollution or contamination;

(g) Modular homes constructed with materials on which the sales or use tax has once been paid;

(h) Aircraft, aircraft equipment, and railroad parts, cars, and equipment, and tangible personal property owned or leased by aircraft, airmotive, or railroad companies, brought into the State solely and exclusively for refurbishing, conversion, or modification within the State and not used or intended for use within the State;

(i) Aircraft, aircraft equipment, and railroad parts, cars, and equipment, and tangible personal property owned or leased by aircraft, airmotive, or railroad companies, brought into the State solely and exclusively for storage for use outside or inside the State;

(j) Vessels, barges, and towboats of at least a fifty-ton load displacement and parts and labor used in the repair and construction of them;

(k) Motor fuels sold to the owners or operators of motor buses operated on designated streets according to regular schedule, under municipal franchise, which are used for municipal transportation purposes;

(l) Agricultural fertilizer, agricultural limestone and agricultural chemicals;

(m) All new and used motor vehicles, trailers or semitrailers that are purchased for a total consideration of less than \$4,000;

(n) Any tangible personal property, specified digital products, digital code, or taxable services used, consumed, distributed, or stored in the State upon which a like tax, equal to or greater than the Arkansas Compensating (Use) Tax, has been paid in another state;

(o) Dental appliances sold by or to dentists or certain other professionals;

(p) Forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers, or composites and which are destroyed or consumed during the manufacture of the item;

(q) Natural gas used as fuel in the process of manufacturing glass;

(r) Sales to the Community Service Clearinghouse, Inc. of Fort Smith;

(s) Foodstuffs to nonprofit agencies;

(t) Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce;

(u) Tangible personal property or services to a nonprofit blood donation organization;

(v) Prescriptive durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical equipment;

(w) Fire protection and emergency equipment to be owned by and exclusively used by a volunteer fire department, and supplies and materials to be used in the construction and maintenance of volunteer fire departments;

(x) Electricity and natural gas to qualified steel and wall and floor tile manufacturers;

(y) Certain new or used trucks to be engaged in interstate commerce;

(z) Utilities used by qualifying agricultural or horticultural equipment;

(aa) Utilities used by grain drying and storage facilities;

(bb) Tangible personal property, specified digital products, digital code, or services to a qualified museum or its contractor or agent if such property is to be used in the construction, repair, expansion, or operation of the qualified museum facility; and

(cc) Machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery, equipment, molds or dies used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at a manufacturing or processing plant or facility in the State, and services relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of such machinery and equipment.

Reference is made to "The Arkansas Compensation (Use) Tax Act of 1949," Title 26, Chapter 53 of the Arkansas Code of 1987 Annotated, for more information concerning the use tax.

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CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed and delivered by the City of Fayetteville, Arkansas (the “City”) and Simmons Bank, Pine Bluff, Arkansas, as dissemination agent (the “Dissemination Agent”), in connection with the issuance of \$15,000,000 City of Fayetteville, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 2024 (the “Bonds”). The Bonds are being issued pursuant to the terms and provisions of Ordinance No. [REDACTED] duly approved by the City Council of the City on August [REDACTED], 2024, and pursuant to the terms and provisions of a Trust Indenture dated as of August 1, 2019, as amended and supplemented by a First Supplemental Trust Indenture dated as of June 1, 2022, and by a Second Supplemental Trust Indenture dated as of October 1, 2024 (as supplemented and amended, the “Indenture”), by and between the City and Simmons Bank, Pine Bluff, Arkansas, as trustee (the “Trustee”). In connection with the issuance and delivery of the Bonds, the City and the Dissemination Agent covenant and agree as follows:

Section 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the City for the benefit of the Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with, and constitutes the written undertaking for the Beneficial Owners of the Bonds required by, SEC Rule 15c2-12(b)(5) (the “Rule”). The City is an “obligated person” within the meaning of the Rule. The Dissemination Agent shall have no liability with respect to the content of any disclosure provided hereunder, and shall be liable only to the City for sending notices hereunder. As required by the Rule, this Disclosure Agreement is enforceable by Beneficial Owners of the Bonds pursuant to Section 7 hereof.

Section 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement, the following capitalized terms shall have the following meanings:

“*Annual Financial Information*” means the financial information and operating data described in Exhibit I.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

“*Audited Financial Statements*” means the audited consolidated financial statements of the City, prepared pursuant to the standards and as described in Exhibit I.

“*Beneficial Owner*” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Business Day” means any day other than a Saturday or Sunday or a day on which banks in the State of Arkansas or in the state in which the Dissemination Agent is located are not open for business.

“Commission” means the U.S. Securities and Exchange Commission.

“Disclosure Representative” means the City’s Finance Director, or his or her designee, or such other person as the City shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” means Simmons Bank, Pine Bluff, Arkansas, acting in its capacity as a dissemination agent hereunder, or any successor dissemination agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

“EMMA” means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation does not include municipal securities as to which a final official statement has been otherwise provided to the MSRB under the Rule.

“Fiscal Year” means any period of twelve (12) consecutive months adopted by the City as its fiscal year for financial reporting purpose. The Fiscal Year of the City presently ends on December 31 of each year.

“Listed Event” means the occurrence of any of the events with respect to the Bonds set forth in Exhibit II.

“Listed Events Disclosure” means dissemination of a notice of a Listed Event as set forth in Section 5.

“MSRB” shall mean the Municipal Securities Rulemaking Board established in accordance with the provisions of Section 15B(b)(1) of the 1934 Act.

“Participating Underwriter” means each broker, dealer or municipal securities dealer acting as an underwriter in any primary offering of the Bonds.

“Prescribed Form” means, with regard to the filing of Annual Financial Information, Audited Financial Statements and notices of Listed Events with the MSRB at www.emma.msrb.org (or such other address or addresses as the MSRB may from time to time specify), such electronic format, accompanied by such identifying information, as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of such information.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission (“SEC”) under the Exchange Act, as modified by Rule 15c2-12(d)(2), as the same may be amended from time to time.

“Sales and Use Tax” shall mean the one percent (1.00%) city-wide sales and use tax authorized under the Local Government Bond Act which has been levied within the City pursuant to Ordinance No. 6216 adopted by the City on December 18, 2018, the collection of which tax commenced as provided by State law, as approved by the voters of the City.

“State” means the State of Arkansas.

“Undertaking” means the obligations of the City pursuant to Sections 4 and 5.

Section 3. CUSIP Number/Final Official Statement. The CUSIP Number of the final maturity of the Bonds is 312673 [REDACTED]. The final Official Statement relating to the Bonds is dated September [REDACTED], 2024 (the “Final Official Statement”).

Section 4. Annual Financial Information Disclosure. Subject to Section 9 of this Disclosure Agreement, the City hereby covenants that it will disseminate, or will cause the Dissemination Agent to disseminate, the Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth below and in Exhibit I) by delivering such Annual Financial Information and the Audited Financial Statements to the MSRB within 180 days of the completion of the City’s Fiscal Year. Such information shall be delivered or caused to be delivered in Prescribed Form and by such time so that such entity receives the information by the dates specified.

Not later than five (5) Business Days prior to the date specified in the preceding paragraph for providing the Annual Financial Information Disclosure to the MSRB, the City shall provide such Annual Financial Information Disclosure to the Dissemination Agent. If by such date the Dissemination Agent has not received a copy of the applicable Annual Financial Information Disclosure, the Dissemination Agent shall contact the applicable Disclosure Representative to determine if the City is in compliance with the preceding paragraph of this Section 4. If the Dissemination Agent is unable to verify that the Annual Financial Information Disclosure has been provided to the MSRB by the date required in the preceding paragraph, the Dissemination Agent shall file a notice with the MSRB in substantially the form attached as Exhibit III hereto.

Contemporaneously with the filing by the Dissemination Agent of any Annual Financial Information Disclosure with the MSRB, the Dissemination Agent shall give notice thereof to the City and the Trustee (if the Trustee is not the Dissemination Agent) certifying that such filing has been made and the date on which it was filed.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the City will disseminate or cause dissemination of a statement to such effect as part of its Annual Financial Information for the Fiscal Year in which such event first occurs.

If any amendment is made to this Disclosure Agreement, the Annual Financial Information for the Fiscal Year in which such amendment is made (or in any notice or supplement provided to the MSRB) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

Section 5. Listed Events Disclosure. Subject to Section 9 of this Disclosure Agreement, the City hereby covenants to disseminate or cause dissemination in a timely manner, not in excess of ten (10) Business Days after the occurrence of the event, of Listed Events Disclosure to the MSRB in Prescribed Form. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Bonds need not be given under this Disclosure Agreement any earlier than the notice (if any) of such redemption is given to the owners of the Bonds pursuant to the Indenture. The City is required to deliver or cause delivery of such Listed Events Disclosure in the same manner as provided by Section 4 of this Disclosure Agreement.

Section 6. Duty to Update EMMA/MSRB. The Dissemination Agent shall determine, in the manner it deems appropriate, whether there has occurred a change in the MSRB's e-mail address or filing procedures and requirements under EMMA each time it is required to file information with the MSRB.

Section 7. Consequences of Failure of the City to Provide Information. In the event of a failure of the City to comply with any provision of this Disclosure Agreement, the Trustee may (and at the request of a Participating Underwriter or the Beneficial Owners of at least 25% in aggregate outstanding principal amount of the Bonds, and upon being indemnified to its satisfaction, shall) or the Beneficial Owner of any Bond may seek specific performance by court order to cause the City to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture or any other agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the City or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

Section 8. Amendments; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the City and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, if:

(i) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the City or the type of business it conducts;

(ii) This Disclosure Agreement, as amended, or the provision, as waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances;

(iii) The amendment or waiver does not materially impair the interests of the Beneficial Owners of the Bonds, as determined either by parties unaffiliated with the City (such as the Trustee) or by an approving vote of the Beneficial Owners of the Bonds holding a majority of the aggregate principal amount of the Bonds (excluding Bonds held

by or on behalf of the City) pursuant to the terms of the Indenture at the time of the amendment; or

- (iv) The amendment or waiver is otherwise permitted by the Rule.

Section 9. Termination of Undertaking. The Undertaking of the City shall be terminated hereunder when the City shall no longer have any legal liability for any obligation on or relating to the repayment of the Bonds. The City shall give notice to the MSRB, or shall cause the Dissemination Agent to give notice, in a timely manner and in Prescribed Form if this Section is applicable.

Section 10. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. A Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to this Disclosure Agreement and has no duty to review the contents thereof. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent for the City.

Section 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the City chooses to include any information from any document or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the City shall not have any obligation under this Disclosure Agreement to update such information or include it in any future disclosure or notice of the occurrence of a Listed Event.

Section 12. Beneficiaries. This Disclosure Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Disclosure Agreement shall inure solely to the benefit of the City, the Dissemination Agent, if any, the Trustee and the Beneficial Owners of the Bonds, and shall create no rights in any other person or entity.

Section 13. Recordkeeping. The City and the Dissemination Agent shall maintain records of all Annual Financial Information Disclosure and Listed Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

Section 14. Past Compliance. The City is a party to multiple prior undertakings pursuant to the Rule. Except as set forth in the Final Official Statement for the Bonds under the caption "SUMMARY OF THE CONTINUING DISCLOSURE AGREEMENT," the City has, to the best of its knowledge, for the past five years, been in compliance in all material respects with the provisions in such undertakings requiring that it file certain financial information and financial statements and certain listed events with the MSRB.

Section 15. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any losses, expenses and liabilities which it may incur arising out of or in the exercise of performance of its powers and duties under this Disclosure Agreement, including the costs and expenses (including attorneys' fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. Such indemnification obligation of the City shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 17. Governing Law. This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State, provided that to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

Dated: **October __**, 2024

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

SIMMONS BANK,
as Dissemination Agent

By: _____
Title:

EXHIBIT I

ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

“*Annual Financial Information*” means receipts of the Sales and Use Tax for the latest Fiscal Year and for the four previous Fiscal Years.

All or a portion of the Annual Financial Information and the Audited Financial Statements as set forth below may be included by reference to other documents which have been submitted to the MSRB or filed with the Commission. The City shall clearly identify each such item of information included by reference.

Annual Financial Information will be provided to the MSRB within 180 days after the last day of the City’s Fiscal Year, commencing with the Fiscal Year ending December 31, 2024. Audited Financial Statements as described below should be filed at the same time as the Annual Financial Information. If Audited Financial Statements are not available when the Annual Financial Information is filed, unaudited financial statements shall be included, and Audited Financial Statements will be provided to the MSRB within ten (10) Business Days after availability to the City.

Audited Financial Statements will be prepared in accordance with generally accepted accounting principles in the United States as in effect from time to time, as such principles may be modified by mandatory statutory principles of the State of Arkansas, if any, as in effect from time to time.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Disclosure Agreement, including for this purpose a change made to the Fiscal Year-end of the City, the City will disseminate a notice to the MSRB of such change in Prescribed Form as required by such Section 4.

EXHIBIT II

EVENTS WITH RESPECT TO THE BONDS FOR WHICH LISTED EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies;
2. Nonpayment-related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
7. Modifications to rights of security holders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution or sale of property securing repayment of the securities, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the City*;
13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;

* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

EXHIBIT III
NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF
FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Fayetteville, Arkansas

Name of Bond Issues: City of Fayetteville, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 2024

Name of Obligated Party: City of Fayetteville, Arkansas

Date of Issuance: October __, 2024

NOTICE IS HEREBY GIVEN that the City of Fayetteville, Arkansas (the “Issuer”) has not provided an Annual Report with respect to the above-named Bonds has not been provided as required by Section 4 of the Continuing Disclosure Agreement between the Issuer and the undersigned dated October __, 2024. The City anticipates that the Annual Report will be filed by _____, 20__.

Dated: _____, 20__

SIMMONS BANK,
Pine Bluff, Arkansas,
as Dissemination Agent

By: _____
Authorized Officer

cc: City of Fayetteville

CITY OF FAYETTEVILLE, ARKANSAS

to

SIMMONS BANK
as Trustee

SECOND SUPPLEMENTAL TRUST INDENTURE

Dated as of **October** 1, 2024

This Second Supplemental Trust Indenture supplements and amends a Trust Indenture dated as of August 1, 2019, as previously supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, each by and between the City of Fayetteville, Arkansas and Simmons Bank, as Trustee. The Trust Indenture, as supplemented and amended hereby, secures the City's (i) \$124,425,000 original principal amount of Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A, (ii) \$74,340,000 original principal amount of Sales and Use Tax Capital Improvement Bonds, Series 2022, and (iii) **\$15,000,000** original principal amount of Sales and Use Tax Capital Improvement Bonds, Series 2024.

Prepared by:

Kutak Rock LLP
124 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201

SECOND SUPPLEMENTAL TRUST INDENTURE

THIS SECOND SUPPLEMENTAL TRUST INDENTURE dated as of October 1, 2024, by and between the **CITY OF FAYETTEVILLE, ARKANSAS** (the “City”), a city of the first class organized under and existing by virtue of the laws of the State of Arkansas, and **SIMMONS BANK**, as trustee (the “Trustee”), a banking corporation organized under and existing by virtue of the laws of the State of Arkansas and having its principal corporate trust office in Pine Bluff, Arkansas;

WITNESSETH:

WHEREAS, the City Council of the City has previously determined that there is a great need for a source of revenue to finance all or a portion of the costs of (i) streets and related improvements (the “Streets Project”), (ii) trail system and related improvements (the “Trails Project”), (iii) drainage and related improvements (the “Drainage Project”); (iv) parks system and related improvements (the “Parks Project”); (v) economic development improvements (the “Economic Development Project”); (vi) City facilities and related improvements (the “City Facilities Project”); (vii) Arts Corridor and related improvements (the “Arts Corridor Project”); (viii) police facilities and related improvements (the “Police Facilities Project”); and (ix) firefighting facilities and related improvements (the “Firefighting Facilities Project”); and

WHEREAS, the people of the State of Arkansas (the “State”) by the adoption of Amendment No. 62 to the Constitution of the State, approved November 6, 1984 (“Amendment 62”), have authorized cities and counties in the State to issue bonds, upon voter approval, to finance certain capital improvements of a public nature, and to secure said bonds by a pledge of the proceeds of certain taxes; and

WHEREAS, the provisions of Amendment 62 have been implemented by the Local Government Bond Act of 1985, codified as Arkansas Code Annotated (1998 Repl. & Supp. 2023) Sections 14-164-301 *et seq.* (as from time to time amended, the “Act”); and

WHEREAS, pursuant to the provisions of Ordinance No. 6126, duly adopted by the City Council of the City on December 18, 2018 (the “Election Ordinance”), there was submitted to the qualified electors of the City ten questions regarding (i) the issuance of not to exceed \$12,200,000 in principal amount of refunding bonds for the purpose of redeeming certain outstanding bonds (the “Prior Bonds”), and (ii) the issuance of an aggregate of not to exceed \$213,865,000 in principal amount of capital improvement bonds for the purpose of financing various capital improvements (including the Streets Project, Trails Project, Drainage Project, Parks Project, City Facilities Project, Arts Corridor Project and Firefighting Facilities Project), said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of one percent (1.00%) pursuant to the Act (the “Sales and Use Tax”); and

WHEREAS, at a special election held April 9, 2019, a majority of the qualified electors of the City voting on each of the aforementioned questions approved the issuance of refunding bonds and capital improvement bonds in the principal amounts and for the specific purposes set

forth on the ballot (and the corresponding levy of the Sales and Use Tax, and the pledge of the receipts thereof to the payment of said bonds); and

WHEREAS, pursuant to the provisions of Ordinance No. 6194 of the City, adopted by the City Council on June 4, 2019, and in accordance with Amendment 62 and the Act, the City has previously issued (i) its \$124,425,000 Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), and (ii) its \$3,170,000 Sales and Use Tax Capital Improvement Bonds, Taxable Series 2019B (the “Series 2019B Bonds”), for the purpose of refunding the Prior Bonds and financing a portion of the costs of the projects described above; and

WHEREAS, pursuant to the provisions of Ordinance No. 6563 of the City, adopted by the City Council on May 3, 2022, and in accordance with Amendment 62 and the Act, the City has also previously issued its \$74,340,000 Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”), for the purpose of financing a portion of the costs of the projects described above; and

WHEREAS, the Series 2019B Bonds have been paid in full; and

WHEREAS, the City and the Trustee have entered into a Trust Indenture dated as of August 1, 2019, as previously amended and supplemented by a First Supplemental Trust Indenture dated as of June 1, 2022 (as amended and supplemented, the “Original Indenture”), pursuant to which the Series 2019 Bonds and Series 2022 Bonds were issued and secured; and

WHEREAS, in order to secure additional funds to pay a portion of the costs of the Streets Project and Parks Project, and to pay legal and other expenses incidental to the issuance of sales and use tax capital improvement bonds for such purposes, it has been determined appropriate and necessary that the City authorize the issuance of its \$15,000,000 Sales and Use Tax Capital Improvement Bonds, Series 2024 (the “Series 2024 Bonds”), pursuant to the provisions of Amendment 62 and the Act, such Series 2024 Bonds to be payable from and secured by a pledge of the receipts of the Sales and Use Tax (as defined in the Original Indenture) on a parity with the pledge of the receipts of the Sales and Use Tax securing the Series 2019 Bonds and Series 2022 Bonds; and

WHEREAS, the conditions for the issuance of Additional Bonds, as set forth in the Original Indenture, have been satisfied; and

WHEREAS, the Series 2024 Bonds are to be dated, bear interest, mature and be subject to redemption as hereinafter in this Second Supplemental Trust Indenture set forth in detail; and

WHEREAS, the execution and delivery of this Second Supplemental Trust Indenture and the issuance of the Series 2024 Bonds have been in all respects duly and validly confirmed, authorized and approved by Ordinance No. [REDACTED] adopted and approved by the City Council of the City on August [REDACTED], 2024; and

WHEREAS, all things necessary to make the Series 2024 Bonds, when authenticated by the Trustee and issued as in this Second Supplemental Trust Indenture provided, the valid, binding and legal obligations of the City according to the import thereof, and to constitute the

Indenture (as defined below) a valid pledge of the receipts of the Sales and Use Tax to the payment of the principal of, premium, if any, and interest on the Series 2019 Bonds, the Series 2022 Bonds, the Series 2024 Bonds and all Additional Bonds (as defined below), if any, to be issued on a parity therewith (the Series 2019 Bonds, the Series 2022 Bonds, the Series 2024 Bonds and such Additional Bonds are hereinafter referred to as the “Bonds”), have been done and performed, and the creation, execution and delivery of this Second Supplemental Trust Indenture and the creation, execution, issuance and delivery of the Series 2024 Bonds, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, in order to make proper provision for the security of the Series 2024 Bonds, it is necessary that the Original Indenture be amended and supplemented as effected hereby;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS SECOND SUPPLEMENTAL TRUST INDENTURE WITNESSETH:

Section 1.01. It is understood and agreed that the provisions of the Original Indenture shall extend to and apply to the security and benefit of the Series 2024 Bonds and that the term “Bonds” as used in the Original Indenture is hereby recognized to include and shall be deemed to refer to (where applicable) the Series 2024 Bonds.

Section 1.02. Section 101 of the Original Indenture is hereby amended by adding thereto the following definitions (and by striking any definitions which are supplanted by the definitions set forth below):

“Additional Bonds” mean Bonds in addition to the Series 2019A Bonds, the Series 2019B Bonds, the Series 2022 Bonds and the Series 2024 Bonds which are issued under the provisions of Section 212 of this Indenture.

“Authorizing Ordinance” means, collectively, (i) Ordinance No. 6194, adopted by the City on June 4, 2019, which authorized the issuance of the Series 2019 Bonds pursuant to this Indenture, (ii) Ordinance No. 6563, adopted by the City on May 3, 2022, which authorized the issuance of the Series 2022 Bonds pursuant to this Indenture, and (iii) Ordinance No. [REDACTED], adopted by the City on August [REDACTED], 2024, which authorized the issuance of the Series 2024 Bonds pursuant to this Indenture.

“Bonds” mean the Series 2019A Bonds, the Series 2019B Bonds, the Series 2022 Bonds, the Series 2024 Bonds and all Additional Bonds issued by the City pursuant to this Indenture. Except to the extent provided in Section 209 hereof and except for refunding bonds issued under the provisions of Section 212 hereof, the aggregate principal amount of Bonds issued hereunder shall not exceed \$226,065,000.

“Indenture” means this Trust Indenture dated as of August 1, 2019, as amended and supplemented by a First Supplemental Trust Indenture dated as of June 1, 2022, and as amended and supplemented by a Second Supplemental Trust Indenture dated as of October 1, 2024, each by and between the City and the Trustee, pursuant to which the Bonds are issued, and any further amendments and supplements thereto.

“Series 2024 Bonds” means City of Fayetteville, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 2024, issued under and secured by this Indenture in the aggregate principal amount of **\$15,000,000**.

Section 2.01. Section 201(c) of the Original Indenture is hereby amended and supplemented to read as follows:

“(c) The Bonds shall be equally and ratably payable and secured hereunder without priority by reason of date of adoption of this Indenture or any Supplemental Indenture authorizing their issuance or by reason of their series, number, date, date of issue, execution, authentication or sale, or otherwise. So long as any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, and for so long as any of the Series 2022 Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, and for so long as any of the Series 2024 Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds.”

Section 2.02. Section 202 of the Original Indenture is hereby amended and supplemented to read as follows:

“Section 202. Authorized Amount. There is hereby authorized the issuance of bonds of the City to be designated “Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A” in the principal amount of One Hundred Twenty-Four Million Four Hundred Twenty-Five Thousand Dollars (\$124,425,000) (the “Series 2019A Bonds”). There is hereby authorized the issuance of bonds of the City to be designated “Sales and Use Tax Capital Improvement Bonds, Series 2019B” in the principal amount of Three Million One Hundred Seventy Thousand Dollars (\$3,170,000) (the “Series 2019B Bonds”). There is hereby authorized the issuance of bonds of the City to be designated “Sales and Use Tax Capital Improvement Bonds, Series 2022” in the principal amount of Seventy-Four Million Three Hundred Forty Thousand Dollars (\$74,340,000) (the “Series 2022 Bonds”). There is hereby authorized the issuance of bonds of the City to be designated “Sales and Use Tax Capital Improvement Bonds, Series 2024” in the principal amount of **Fifteen Million Dollars (\$15,000,000)** (the “Series 2024 Bonds”). No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$226,065,000, except as provided in Section 209 and except for refunding bonds issued under the provisions of Section 212 hereof. Following the issuance of the Series 2024 Bonds, no Additional Bonds may be issued for the purpose of financing Projects.”

Section 2.03. Article II of the Original Indenture is hereby amended by adding at the end thereof the following sections:

“Section 220. Details of Series 2024 Bonds. The Series 2024 Bonds (i) shall be designated “City of Fayetteville, Arkansas Sales and Use Tax Capital Improvement Bonds, Series 2024,” (ii) shall be in the aggregate principal amount of \$15,000,000, (iii) shall be dated as of their date of delivery, (iv) shall bear interest from such date at the rates hereinafter provided until paid, payable semiannually on May 1 and November 1 of each year, commencing May 1, 2025, (v) shall be issued in denominations of \$5,000 each, or any integral multiple thereof, (vi) shall be numbered from R24-1 upwards in order of issuance according to the records of the Trustee, and (vii) shall mature, unless sooner redeemed in the manner in this Indenture set forth, on November 1 in each of the years and in the amounts set forth in the following table, which table also sets forth the interest rates for the Series 2024 Bonds:

<u>Year</u> <u>(November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2025	\$	%
2026		
2027		
2028		
2029		
2030		
2031		

Section 221. Form of Series 2024 Bonds. The Series 2024 Bonds shall be initially issued as fully registered bonds, without coupons, in the form of () typewritten bond certificates (one for each maturity) to be delivered to the Securities Depository. Each such certificate shall be initially registered in the name of the nominee of the Securities Depository, and no Beneficial Owner will receive a certificate representing his interest in the Series 2024 Bonds, except upon the occurrence of the events described in Section 216 of this Indenture. Beneficial Owners shall be deemed to have waived any right to receive a bond certificate except under the circumstances described in Section 216. The Series 2024 Bonds and the Trustee’s certificate of authentication to be endorsed thereon shall be in substantially the form set forth in Exhibit A to the Second Supplemental Trust Indenture, with appropriate variations, insertions and omissions as permitted or required by this Indenture.

Section 222. Delivery of Series 2024 Bonds. Simultaneously with the delivery of the Series 2024 Bonds, the Trustee shall apply the proceeds thereof as follows:

- (1) An amount equal to \$ () shall be deposited in the Streets Project Account of the Project Fund;
- (2) An amount equal to \$ () shall be deposited in the Parks Project Account of the Project Fund; and

(3) The balance of said proceeds in the amount of \$ [redacted] shall be deposited in the Costs of Issuance Fund for payment of Costs of Issuance as directed by a Certificate of the City.”

Section 3.01. Article III of the Original Indenture is hereby amended by adding at the end thereof the following section:

“**Section 308. Redemption of Series 2024 Bonds.** (a) The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Project Fund moneys in excess of the amount needed to complete the Streets Project or the Parks Project, which moneys shall be transferred to the Redemption Fund pursuant to Section 502 hereof.

(b) The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Surplus Tax Receipts deposited in the Redemption Fund pursuant to Section 503 hereof. While any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds.

(c) The Series 2024 Bonds are subject to redemption with funds from any source, at the option of the City, communicated in a written notice to the Trustee not less than sixty (60) days prior to the date fixed for redemption, in whole or in part on any date on or after November 1, 2025, in such maturities as shall be selected by the City and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed plus accrued interest to the date of redemption.

(d) The Series 2024 Bonds maturing on November 1, 20 [redacted] are subject to mandatory sinking fund redemption prior to maturity in part, on November 1 in the years and principal amounts set forth below at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption.

Year	Principal Amount
20 [redacted]	\$ [redacted]
20 [redacted]	[redacted]
20 [redacted]	[redacted]
20 [redacted] (maturity)	[redacted]

At its option, to be exercised on or before the 45th day next preceding any mandatory sinking fund redemption date for any Series 2024 Bonds maturing November 1, 2024 (the “Term Bonds”), the City may deliver to the Trustee for cancellation Term Bonds of the appropriate maturity, or portions thereof (\$5,000 or any integral multiple thereof), in any aggregate principal amount desired. Each such Term Bond, or portion thereof, so delivered or previously redeemed (otherwise than through mandatory sinking fund redemption) and cancelled by the Trustee shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the City with respect to each such Term Bond on such mandatory sinking fund redemption date, and any excess over such amount shall be credited on future mandatory sinking fund redemption obligations with respect to such Term Bond in chronological order, and the principal amount of the corresponding Term Bonds so to be redeemed shall be accordingly reduced.”

Section 4.01. Section 501(a)(i) of the Original Indenture is hereby amended and restated to read as follows:

“(a) There are hereby created and established the following Funds and Accounts:

(i) Project Fund, and a Streets Project Account (with a Series 2019A Subaccount, a Series 2022 Subaccount and a Series 2024 Subaccount therein), a Trails Project Account (with a Series 2019A Subaccount and a Series 2022 Subaccount therein), a Drainage Project Account (with a Series 2019A Subaccount and a Series 2022 Subaccount therein), a Parks Project Account (with a Series 2019A Subaccount, a Series 2022 Subaccount and a Series 2024 Subaccount therein), a City Facilities Project Account (with a Series 2019A Subaccount and a Series 2022 Subaccount therein), an Arts Corridor Project Account (with a Series 2019A Subaccount and a Series 2022 Subaccount therein), a Police Facilities Project Account, a Firefighting Facilities Project Account (with a Series 2019A Subaccount and a Series 2022 Subaccount therein) and an Economic Development Project Account therein;”

Section 4.02. Section 503(b) of the Original Indenture is hereby amended and restated to read as follows:

“(b) Upon receipt, but in no event later than the last day of each month in which receipts of the Sales and Use Tax are deposited in the Revenue Fund, commencing no later than August 31, 2019, there shall be transferred from the Revenue Fund, in the following order, the amounts set forth below:

FIRST: For deposit to the Interest Account of the Bond Fund, an amount equal to one-sixth (1/6) of the interest on the Outstanding Bonds due on the next interest payment date; provided, however, (i) with respect to the deposits to be made to the Interest Account relating to the Series 2019 Bonds during the months of August, 2019 through April, 2020, such deposits shall be in an amount equal to one-ninth (1/9) of the interest due on the Series 2019 Bonds on May 1, 2020, (ii) with respect to the deposits to be made to the Interest Account relating to the Series 2022 Bonds during the months of July, 2022 through October, 2022,

such deposits shall be in an amount equal to one-fourth (1/4) of the interest due on the Series 2022 Bonds on November 1, 2022, and (iii) with respect to the deposits to be made to the Interest Account relating to the Series 2024 Bonds during the months of October, 2024 through April, 2025, such deposits shall be in an amount equal to one-seventh (1/7) of the interest due on the Series 2024 Bonds on May 1, 2025;

SECOND: For deposit to the Principal Account of the Bond Fund, an amount equal to one-twelfth (1/12) of the next scheduled principal maturity of Outstanding Bonds (including mandatory sinking fund redemptions); provided, however, (i) with respect to the Series 2019 Bonds, such deposits shall not commence until November 2019, (ii) with respect to the Series 2022 Bonds, such deposits during the months of July, 2022 through October, 2022, shall be in an amount equal to one-fourth (1/4) of the principal due on the Series 2022 Bonds on November 1, 2022, and (iii) with respect to the Series 2024 Bonds, such deposits during the months of October, 2024 through October, 2025, shall be in an amount equal to one-thirteenth (1/13) of the principal due on the Series 2024 Bonds on November 1, 2025;

THIRD: For deposit to the Rebate Fund, an amount sufficient to satisfy the City's obligations under Section 507 hereof;

FOURTH: For payment to the Trustee and Paying Agent, the amount, if any, necessary to pay or reimburse the Trustee and Paying Agent for fees and expenses related to the Bonds; and

FIFTH: All remaining moneys ("Surplus Tax Receipts") will be transferred to the Redemption Fund and shall be applied to call Bonds for redemption prior to maturity as provided in Section 301(c), 307(b), 308(b) and Section 506 of the Indenture."

Section 4.03. Section 505 of the Original Indenture is hereby amended and supplemented to read as follows:

"Section 505. Cost of Issuance Fund. There shall be deposited to the credit of the Cost of Issuance Fund all moneys received for said Fund pursuant to Section 208, Section 219 and Section 222 hereof. The Trustee shall pay those Costs of Issuance as directed by the City pursuant to a Certificate delivered on a Closing Date. After all Costs of Issuance have been paid (and in any event not later than December 1, 2019 with respect to the Series 2019 Bonds, October 1, 2022 with respect to the Series 2022 Bonds, and February 1, 2025 with respect to the Series 2024 Bonds), any remaining moneys in the Cost of Issuance Fund shall be transferred to the Interest Account of the Bond Fund."

Section 4.04. Section 506 of the Original Indenture is hereby amended and supplemented to read as follows:

“Section 506. Redemption Fund. (a) There shall be deposited to the credit of the Redemption Fund all moneys required to be transferred thereto pursuant to Section 502 and Section 503 of this Indenture.

(b) Moneys credited to the Redemption Fund shall be expended only as set forth in this Section 506.

(c) Moneys in the Redemption Fund shall be transferred to the Principal Account of the Bond Fund at such times as may be necessary to effectuate, on the first available date, redemptions of Bonds required by Section 301(a) and (b), Section 307(a) and (b) and Section 308(a) and (b) of this Indenture. While any of the Series 2019A Bonds are Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds.

(d) The amounts accumulated in the Redemption Fund, if so directed by the City by means of a Certificate delivered to the Trustee, shall be applied by the Trustee to the purchase of Bonds of the maturities which would otherwise be redeemed pursuant to Section 301(a) and (b), Section 307(a) and (b), Section 308(a) and (b) and this Section 506 but for the provisions of this subsection (d), at prices directed by the City not exceeding the applicable redemption prices of the Bonds which would be redeemed but for the operation of this sentence. Interest accrued on the Bonds so purchased shall be paid from moneys credited to the Interest Account of the Bond Fund.”

Section 5.01. Section 902(a) of the Original Indenture is hereby amended and supplemented to read as follows:

“(a) Subject to subsection (b) of this Section 902, the City shall, from moneys lawfully available therefor, pay to the Trustee and any Paying Agent reasonable compensation for all services performed hereunder and also all reasonable expenses, charges and other disbursements and those of their attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created and the performance of the powers and duties hereunder and, to the extent permitted by law and from moneys lawfully available therefor, shall indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder. With respect to the Series 2019A Bonds, the Trustee’s initial authentication fee shall be \$13,500 and the administration fee of the Trustee shall be \$10,000 annually, with an additional \$500 annual fee for each Account within the Project Fund relating to a Project financed with proceeds of the Series 2019A Bonds prior to the final Completion Date with respect to any such Project. With respect to the Series 2019B Bonds, the Trustee’s initial authentication fee shall be \$2,000 and the

administration fee of the Trustee shall be \$1,500 annually, with an additional \$500 annual fee prior to the final Completion Date with respect to the Economic Development Project. With respect to the Series 2022 Bonds, the Trustee's initial authentication fee shall be \$7,500 and the administration fee of the Trustee shall be \$6,000 annually, with an additional \$500 annual fee for each Account within the Project Fund relating to a Project financed with proceeds of the Series 2022 Bonds prior to the final Completion Date with respect to any such Project. With respect to the Series 2024 Bonds, the Trustee's initial authentication fee shall be \$[REDACTED] and the administration fee of the Trustee shall be \$[REDACTED] annually, with an additional \$500 annual fee for each Account within the Project Fund relating to a Project financed with proceeds of the Series 2024 Bonds prior to the final Completion Date with respect to any such Project. In addition, the Trustee shall charge a fee for its services as dissemination agent of \$100 for each separate posting made to the Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board. If the City shall fail to make any payment required by this subsection (a), the Trustee may make such payment from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any of the Bonds Outstanding hereunder. The City shall not be required to indemnify the Trustee against any liabilities which the Trustee may incur as a result of negligent or wrongful acts or omissions of the Trustee."

Section 6.01. Severability. (a) If any provisions of this Second Supplemental Trust Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

(b) The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Second Supplemental Trust Indenture contained shall not affect the remaining portions of this Second Supplemental Trust Indenture or any part thereof.

Section 6.02. Applicable Provisions of Law. This Second Supplemental Trust Indenture shall be considered to have been executed in the State of Arkansas and it is the intention of the parties that the substantive law of the State of Arkansas govern as to all questions of interpretation, validity and effect.

Section 6.03. Counterparts. This Second Supplemental Trust Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.04. Ratification of Original Indenture. As supplemented and amended hereby, the Original Indenture is hereby ratified and confirmed.

IN WITNESS WHEREOF, the City has caused these presents to be signed in its name and behalf by its Mayor and attested by its City Clerk, and to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its behalf by its duly authorized officers.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

SIMMONS BANK
as Trustee

By: _____
Title:

ATTEST:

By: _____
Title:

[SIGNATURE PAGE TO SECOND SUPPLEMENTAL TRUST INDENTURE]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

Before me a Notary Public, duly commissioned, qualified and acting within and for the State and county aforesaid, appeared in person the within named Lioneld Jordan and Kara Paxton, Mayor and City Clerk, respectively, of the City of Fayetteville, Arkansas, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the City, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2024.

Notary Public

My Commission expires:

(SEAL)

[ACKNOWLEDGEMENT TO SECOND SUPPLEMENTAL TRUST INDENTURE]

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF JEFFERSON)

Before me a Notary Public, duly commissioned, qualified and acting within and for the State and county aforesaid, appeared in person the within named _____ and _____, the _____ and the _____, respectively, of Simmons Bank, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the bank, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2024.

Notary Public

My Commission expires:

(SEAL)

[ACKNOWLEDGEMENT TO SECOND SUPPLEMENTAL TRUST INDENTURE]

EXHIBIT A TO SECOND SUPPLEMENTAL TRUST INDENTURE

Form of Series 2024 Bond

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by the authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED

No. R24-_____

REGISTERED

\$_____

**UNITED STATES OF AMERICA
STATE OF ARKANSAS
CITY OF FAYETTEVILLE, ARKANSAS
SALES AND USE TAX CAPITAL IMPROVEMENT BOND
SERIES 2024**

Interest Rate: _____%

Maturity Date: November 1, 20__

Date of Bond: **October** __, 2024

CUSIP: 312673 ____

Registered Owner: CEDE & CO.

Principal Amount: _____ DOLLARS

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fayetteville, Arkansas, a municipality and political subdivision organized and existing by virtue of the laws of the State of Arkansas (the "City"), for value received, promises to pay to the Registered Owner shown above, or registered assigns, on the Maturity Date shown above, but solely from the source and in the manner hereinafter set forth, the Principal Amount shown above, and in like manner to pay interest on said amount from the date hereof until payment of such Principal Amount has been made or duly provided for, at the Interest Rate per annum shown above, such interest to be payable semiannually on May 1 and November 1 of each year, commencing **May 1, 2025**, except as the provisions hereinafter set forth with respect to redemption of this bond prior to maturity may become applicable hereto. The principal of and premium, if any, on this bond are payable in lawful money of the United States of America upon the presentation and surrender hereof at the principal corporate trust office of Simmons Bank, Pine Bluff, Arkansas, or its successor or successors, as trustee (the "Trustee"). So long as Cede & Co. or another nominee of DTC is the registered owner of this bond, payment of interest hereon shall be made by wire transfer of immediately available funds by the Trustee to the Registered Owner as of the fifteenth day of the calendar month preceding the calendar month in which such interest payment date shall fall (the "Record Date"). At any time thereafter, payment of interest hereon shall be made by check or draft of the Trustee to the Registered Owner as of the applicable Record Date, at the owner's address as it appears on the bond registration books of the City kept by the Trustee.

This bond, designated “Sales and Use Tax Capital Improvement Bond, Series 2024”, is one of a series of bonds aggregating **Fifteen Million Dollars (\$15,000,000)** (the “Series 2024 Bonds”). The Series 2024 Bonds are being issued in part for the purpose of financing all or a portion of the costs of (i) streets and related improvements (the “Streets Project”) and (ii) parks system and related improvements (the “Parks Project,” and together with the Streets Project, the “Projects”).

Series 2024 Bond proceeds will be utilized to pay Project costs and to pay the costs of issuance of the Series 2024 Bonds.

The Series 2024 Bonds are issued under and are secured by and entitled to the protection of a Trust Indenture dated as of August 1, 2019, as supplemented and amended by a First Supplemental Trust Indenture dated as of June 1, 2022, and as supplemented and amended by a Second Supplemental Trust Indenture dated as of **October 1, 2024** (as supplemented and amended, the “Indenture”), each by and between the City and the Trustee, which Indenture is available for inspection at the principal corporate trust office of the Trustee. Reference is hereby made to the Indenture and to all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City, the Trustee and the owners of the Series 2024 Bonds, and the terms upon which the Series 2024 Bonds are issued and secured.

The Series 2024 Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly Amendment No. 62 to the Constitution of Arkansas, as implemented by the Local Government Bond Act of 1985, codified as Arkansas Code Annotated (1998 Repl. & Supp. 2023) §§14-164-301 *et seq.* (as from time to time amended, the “Local Government Bond Act”), Ordinance No. **_____** of the City adopted **August _____, 2024**, which ordinance authorized the execution and delivery of the Second Supplemental Trust Indenture, and a special election duly held on April 9, 2019, at which a majority of the qualified electors of the City voting approved the issuance of the Series 2024 Bonds. In accordance with the Local Government Bond Act, the City has pledged all receipts from a one percent (1.00%) local sales and use tax (the “Sales and Use Tax”) levied by the City pursuant to Ordinance No. 6126, adopted by the City on December 18, 2018, to provide funds for the repayment of the Series 2024 Bonds.

The pledge of the receipts of the Sales and Use Tax (collectively, the “Tax Receipts”) presently secures payment of the Series 2024 Bonds and (i) the City’s \$124,425,000 original principal amount of Sales and Use Tax Capital Improvement and Refunding Bonds, Series 2019A (the “Series 2019A Bonds”), and (ii) the City’s \$74,340,000 original principal amount of Sales and Use Tax Capital Improvement Bonds, Series 2022 (the “Series 2022 Bonds”). The Indenture provides that the City may hereafter from time to time issue Additional Bonds for the purpose of refunding all or any portion of the outstanding Series 2019A Bonds, Series 2022 Bonds or Series 2024 Bonds under certain terms and conditions contained in the Indenture and, if issued or incurred, such Additional Bonds will rank on a parity of security with the unrefunded portion of the Series 2019A Bonds, Series 2022 Bonds and Series 2024 Bonds and be equally and ratably secured by and entitled to the protection of the Indenture.

The Series 2024 Bonds are not general obligations of the City, but are special obligations secured by an irrevocable pledge of and lien on the Tax Receipts, as more particularly described in the Indenture. In no event shall the Series 2024 Bonds constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

The holder of this Series 2024 Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds and Additional Bonds, if any, issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon. Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Project Fund moneys in excess of the amount needed to complete the Streets Project or the Parks Project.

The Series 2024 Bonds shall be redeemed prior to maturity, in whole or in part, on any interest payment date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Surplus Tax Receipts. "Surplus Tax Receipts" are Tax Receipts in excess of the amount necessary to ensure the prompt payment of scheduled debt service on the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds and Additional Bonds, (ii) pay any arbitrage rebate due under Section 148(f) of the Internal Revenue Code of 1986, as amended, with respect to the Series 2019A Bonds, Series 2022 Bonds, Series 2024 Bonds or any Additional Bonds, and (iii) pay Trustee and Paying Agent fees and expenses. While any of the Series 2019A Bonds remain Outstanding, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2019A Bonds. Following payment in whole of the Series 2019A Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2022 Bonds. Following payment in whole of the Series 2019A Bonds and the Series 2022 Bonds at maturity or upon redemption prior to maturity, all Surplus Tax Receipts shall be allocated to the redemption of the Series 2024 Bonds.

The Series 2024 Bonds are subject to redemption with funds from any source, at the option of the City, communicated in a written notice to the Trustee not less than sixty (60) days prior to the date fixed for redemption, in whole or in part on any date on or after **November 1, 2025**, in such maturities as shall be selected by the City and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed plus accrued interest to the date of redemption.

The Series 2024 Bonds maturing on November 1, 20___, are subject to mandatory sinking fund redemption prior to maturity in part, on November 1 in the years and amounts set forth below at a redemption price equal to the principal amount thereof plus accrued interest to the date of redemption, without premium;

Year	Principal Amount
20___	\$
20___	\$
20___	\$
20___	\$
20___ (maturity)	\$

At its option, to be exercised on or before the 45th day next preceding any mandatory sinking fund redemption date for any Series 2024 Bonds, the City may deliver to the Trustee for cancellation Series 2024 Bonds of the appropriate maturity, or portions thereof (\$5,000 or any integral multiple thereof), in any aggregate principal amount desired. Each such Series 2024 Bond, or portion thereof, so delivered or previously redeemed (otherwise than through mandatory sinking fund redemption) and canceled by the Trustee shall be credited by the Trustee at 100% of the principal amount thereof on the obligation of the City on such mandatory sinking fund redemption date, and any excess over such amount shall be credited on future mandatory sinking fund redemption obligations of that maturity in chronological order, and the principal amount of such Series 2024 Bonds so to be redeemed shall be accordingly reduced.

Notwithstanding the foregoing, so long as DTC or its nominee is the sole registered owner of the Series 2024 Bonds, the particular Series 2024 Bonds or portions thereof to be redeemed in part within a maturity shall be selected by lot by DTC in such manner as DTC shall determine. In selecting Series 2024 Bonds for redemption prior to maturity, in the case any outstanding Series 2024 Bond is in a denomination greater than \$5,000, each \$5,000 of face value of such Series 2024 Bond shall be treated as a separate Series 2024 Bond of the denomination of \$5,000.

In the event any of the Series 2024 Bonds or portions thereof (which shall be \$5,000 or any integral multiple thereof) are called for redemption, notice thereof shall be given by the Trustee by first class mail to the registered owner of each such Series 2024 Bond addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Series 2024 Bond with respect to which no such failure or defect has occurred. Each notice shall identify the Series 2024 Bonds or portions thereof being called, and the date on which they shall be presented for payment. After the date specified in such call notice, the Series 2024 Bond or Bonds so called for redemption will cease to bear interest provided funds sufficient for their redemption have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 2024 Bond may be transferred on the books of registration kept by the Trustee by the registered owner or by his duly authorized attorney upon surrender hereof,

together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney.

The Series 2024 Bonds are issuable as registered bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Indenture, Series 2024 Bonds may be exchanged for a like aggregate principal amount of Series 2024 Bonds of other authorized denominations.

No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Series 2024 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Series 2024 Bonds or the Indenture against any past, present or future City Council member, officer or employee of the City, or any successor, as such, either directly or through the City or any successor of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such City Council member, officer or employee as such is hereby expressly waived and released as a condition of and consideration for the issuance of any of the Series 2024 Bonds.

This Series 2024 Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Series 2024 Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Series 2024 Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the revenues pledged to the payment of the principal of and premium, if any, and interest on the Series 2024 Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Series 2024 Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fayetteville, Arkansas has caused this Series 2024 Bond to be executed by its Mayor and City Clerk, thereunto duly authorized (by their manual or facsimile signatures), and its corporate seal to be affixed or imprinted hereon, all as of the date hereof shown above.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

(S E A L)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the Series 2024 Bonds of the issue described in and issued under the provisions of the within mentioned Indenture.

Attached hereto is the complete text of the opinion of Kutak Rock LLP, a signed original of which is on file with the undersigned, delivered and dated the date of the original delivery of and payment for the Series 2024 Bonds.

Date: _____

SIMMONS BANK,
as Trustee

By: _____
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, _____, hereby sells, assigns, and transfers unto _____, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: _____, 20__.

Transferor

GUARANTEED BY:

NOTICE: Signature(s) must be guaranteed by an institution satisfactory to the Trustee or other transfer agent.



MEETING OF AUGUST 13, 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: **Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 169.03, Review and or Permits Required, Exceptions): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, and 169.03. The proposed code changes would modify development process requirements. (Originally heard with ADM-2024-0036)**

RECOMMENDATION:

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending §166.01 Development Categories, 166.02, Development Review Process, 169.03, Review and/or Permits Required, Exceptions, as described in the attached Exhibit 'A'.

BACKGROUND:

In 2021, major ordinance changes were approved by City Council to revamp drainage and development standards, with a secondary goal of incentivizing infill. The changes that were approved required new green stormwater practices on a sliding scale of added impervious surface, and decoupled certain requirements from a question of use and tied those requirements instead to the overall impact to stormwater. This introduced three new levels of development threshold and shifted the requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 square feet of added, new impervious surface.

In the intervening period since 2021, staff audited the outcomes of these changes, and identified four main areas that require revision and clarification. Those areas for study, and their current status, are listed below.

- **Parkland Dedication**
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant.
 - Proposed ordinance changes were already evaluated, reviewed, and approved by City Council on May 21, 2024.
- **Timeliness of Variances and Appeals**
 - Variances are only permitted to be appealed with an overall project, rather than piecemeal. This becomes an issue when certain development types are no longer subject to large-scale development or site improvement plan.
 - Proposed ordinance changes were already evaluated, reviewed, and approved by City Council on July 16, 2024.

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

- Application of Tree Preservation standards
 - Certain projects are no longer subject to tree preservation requirements.
 - Proposed ordinance changes to tree preservation requirements were heard by City Council on July 16, 2024, which would require an abbreviated tree preservation plan for projects adding between 1,201 and 6,000 square feet of impervious surface. An option for escrow is also permitted to be considered. The item was left on the first reading for additional consideration.
- Project Classification
 - Projects with less than 10,000 square feet of impervious surface still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting. Staff and the Planning Commission are recommending changes to this ordinance with this item, and they are described below.

DISCUSSION:

The amendment presented with this application is to the overarching project classification requirements. These changes were submitted by staff to the Planning Commission's Long-Range Planning Committee for their March 21, 2024 meeting as part of a larger set of proposed ordinance amendments (summarized above). The Committee again considered the amendments at their April meeting before forwarding the proposal to the May 13, 2024 Planning Commission. At this public hearing, the Planning Commission tabled the item indefinitely and referred it again to the Long-Range Planning Committee. From there, the Commission forwarded individual elements once consensus was reached on language and impact, with the specific proposed changes to project classifications advanced on June 20, 2024, which includes:

- Reclassification of a large-scale development, large site improvement plan, and small site improvement plan to be tied to the amount of development and/or redevelopment of impervious surface area being proposed, rather than being tied solely to the addition of new impervious surface. The intent of this change is for this development or redevelopment area to be considered as the overall limits of construction for a proposal and is not intended to be triggered by interior remodels or renovations that do not propose or require any additional exterior work.
- Requiring a concept plan when a project proposes to develop and/or redevelop greater than total 6,000 square feet and less than 10,000 square feet of impervious surface area.
- Clarifying that grading permits are required when a project is developing and/or redeveloping more than 10,000 square feet of impervious surface area.

Staff is also incorporating text clean-up with this proposal, including clarification about public meeting and hearing requirements for certain project types (large-scale developments and planned zoning districts, in particular).

At the July 22, 2024 Planning Commission meeting, Commissioners voted 8-0-0 to forward the proposed ordinance changes to the City Council with a recommendation of approval. Commissioner Gulley made the motion, which was seconded by Commissioner Werner. Conversation centered around clarifying the requirements for a concept plan, and responding to public comment about how the proposed changes could disincentivize infill. Staff clarified that concept plans would be triggered if a development proposed more than 6,000 square feet of development or redevelopment of impervious surface, that the concept plan process is strictly limited to comments from staff and franchise utilities, and are not subject to any form of approval, conditional or otherwise. Commissioners found and staff affirmed that these changes would not likely add to the overall timeline of a project, since many projects are not currently receiving a coordinated round of review ahead of time which has resulted in delays. While there were concerns that the changes may require additional projects to go through a public hearing or site improvement plan process, staff clarified that the workload

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

already exists for staff since reviews are being completed through the permitting process, which are seeing increasing delays in issuance due to lack of coordination. Staff also clarified that the intent of the ordinance is only meant to affect a specific project area, and that drainage criteria are still evaluated and only triggered with any added impervious surface to a site.

Public comment: One member of the public spoke at the meeting with concerns about the effects of proposed changes on infill with regards to the proposed development thresholds and how impervious surface is calculated. The member of the public was also concerned that these changes were coming about due to neighborhood complaints about construction in nearby areas, and had concerns that this would undermine the voices who contributed to City Plan 2040.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Proposed Ordinance - Exhibit A (#3), Proposed Ordinance Amendment in Strikeout/Highlight (#5), Planning Commission Staff Report (#4)



City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-388

Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 169.03, Review and or Permits Required, Exceptions): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, and 169.03. The proposed code changes would modify development process requirements. (Originally heard with ADM-2024-0036)

AN ORDINANCE TO AMEND § 166.01 DEVELOPMENT CATEGORIES, § 166.02 DEVELOPMENT REVIEW PROCESS AND § 169.03 REVIEW AND/OR PERMITS REQUIRED; EXCEPTIONS OF THE FAYETTEVILLE CITY CODE TO ADDRESS DEVELOPMENT CLASSIFICATIONS, CONCEPT PLAN REQUIREMENTS, AND GRADING PERMIT REQUIREMENTS

WHEREAS, the City Council of the City of Fayetteville, Arkansas approved major ordinance changes in 2021 to revamp the drainage and development standards and incentivize infill; and

WHEREAS, City staff monitored the outcomes of these ordinance changes and identified provisions of the Fayetteville City Code which required revision and clarification based on their observation; and

WHEREAS, City staff proposed amendments to § 166.01, § 166.02 and § 169.03 of the Fayetteville City Code which would reclassify large-scale developments, large site improvement plans, and small site improvement plans to be tied to the amount of development or redevelopment of impervious surface area, rather than new impervious surface area, to require concept plans when a project proposes to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of impervious surface area, and to clarify that grading permits are required when a project is developing or redeveloping more than 10,000 square feet of impervious surface area; and

WHEREAS, the Planning Commission voted unanimously to recommend approval of these changes to 166.01, 166.02 and 169.03 at its meeting held on July 22, 2024.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.01(C)(1) and enacts the following replacement language:

“(C)(1) Large Scale Development. A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to a development and/or redevelopment

area of more than 10,000 square feet of impervious surface and where a corresponding subdivision of land is not proposed.

(a) Requirement. The development of the following must be processed in accordance with the requirements for a large-scale development:

(i) A site 1 acre or greater in size and developing and/or redeveloping an area of more than 10,000 square feet of impervious surface;

(ii) Facilities emitting odors or handling explosives; and

(b) Excluded Developments. Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious area or a development on a site in a zoning district subject to administrative approval.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.01(C)(3) and enacts the following replacement language:

“(C)(3) Small Site Improvement Plan. A small site improvement plan review is intended for development on a site that is less than 1 acre in size and proposes a development and/or redevelopment area of more than 10,000 square feet of impervious surface.

(a) Requirement. The development of the following must be processed in accordance with the requirements for a small site improvement plan:

(i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;

(ii) A development and/or redevelopment area of more than 10,000 square feet of impervious surface on site of less than 1 acre within any zoning district.

(b) Excluded Developments. Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious surface and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.01(C)(4) and enacts the following replacement language:

“(C)(4) Concept Plan. When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review. Developments below or above this threshold, or in the city’s planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review.”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.02(B) and enacts the following replacement language:

“(B) Public Meetings. Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

(1) Technical Plat Review Committee. The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, concurrent plat, and concept plan. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.

(2) Subdivision Committee. The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments.

(3) Planning Commission. The following development applications are required to be reviewed by the Planning Commission. Large scale development forwarded by the Subdivision Committee, preliminary plat, concurrent plat, and planned zoning district with or without concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council.”

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends § 166.02(C)(1) by inserting the following language at the end of the subsection: “Concept plans are not subject to approval or denial.”

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 166.02(E)(2) and enacts the following replacement language:

“(E)(2) In addition to §166.02(E), before a building permit is issued for site that develops and/or redevelops between 1,201 and 10,000 square feet of impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.”

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 169.03(B)(2) and enacts the following replacement language:

“(B)(2) Development and/or redevelopment of an area of more than 10,000 square feet of impervious surface;”

City of Fayetteville Staff Review Form

2024-388

Item ID

8/20/2024

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

Jonathan Curth

8/2/2024

DEVELOPMENT SERVICES (620)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 169.03, Review and or Permits Required, Exceptions): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, and 169.03. The proposed code changes would modify development process requirements. (Originally heard with ADM-2024-0036).

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:

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to a development and/or redevelopment area of more than 10,000 square feet of impervious surface and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and developing and/or redeveloping an area of more than 10,000 square feet of impervious surface;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious area or a development on a site in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

-
- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size and proposes a development and/or redevelopment area of more than 10,000 square feet of impervious surface. .
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
- (ii) A development and/or redevelopment area of more than 10,000 square feet of impervious surface on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious surface and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review. .
- (D) *Modifications.*
- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.
- (Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, concurrent plat, and concept plan. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments..
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development forwarded by the Subdivision Committee, preliminary plat, concurrent plat, and planned zoning district with or without concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

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- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
 - (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
 - (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

- approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.
- (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:
- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
 - (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.
- (E) *Building Permits.*
- (1) Before a building permit is issued the developer shall:
- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
- (2) In addition to §166.02(E), before a building permit is issued for site that develops and/or redevelops between 1,201 and 10,000 square feet of impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) Development and/or redevelopment of an area of more than 10,000 square feet of impervious surface;
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to ~~create more than 10,000 square feet of impervious area a development and/or redevelopment area of more than 10,000 square feet of impervious surface~~ and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and ~~creating more than 10,000 square feet of new impervious area~~ developing and/or redeveloping an area of more than 10,000 square feet of impervious surface;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* ~~Developments creating less than 10,000 square feet of new impervious area or a development on a lot or parcel~~ Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious area or a development on a site in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A

large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size ~~and proposes a development and/or redevelopment area of more than 10,000 square feet of impervious surface. with greater than 10,000 square feet of new impervious area.~~
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
- (ii) ~~A development and/or redevelopment area of more than 10,000 square feet of impervious surface~~ The creation of more than 10,000 square feet of impervious area for a development on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* ~~The construction of less than or equal to 10,000 square feet of new impervious area shall be exempt from the site improvement plan requirements~~ Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious surface and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* ~~When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review. When a developer intends to subdivide property within the city or city's planning area boundary, he/she shall submit a concept plan to obtain feedback and recommendations from city staff prior and the Planning Commission to submitting a fully engineered development plan for review. When a developer intends to develop greater than 10,000 square feet of new impervious area within the city or city's planning area boundary, they may submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review.~~

(D) *Modifications.*

- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.

(Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) Application Submittal

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) Public Meetings. Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, ~~and concurrent plat, and concept plan~~. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. ~~Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.~~
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development forwarded by the Subdivision Committee, Preliminary plat, concurrent plat, and planned zoning district with or without concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. ~~Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.~~

(C) Approval and Denial Criteria

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.

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- (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:
- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
- (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
- (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.

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- (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.
- (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:
- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
- (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
- (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
- (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
- (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.
- (E) *Building Permits.*
- (1) Before a building permit is issued the developer shall:
- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
- (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
- (c) Comply with all applicable zoning and development codes.
- (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
- (i) Obtain approval from the appropriate governing body.
- (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
- (iii) Complete applicable conditions of approval.
- (2) In addition to §166.02(E), before a building permit is issued for site that ~~creates-develops and/or redevelops~~ between 1,201 and 10,000 square feet of ~~new~~ impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

- (F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:
- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
 - (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
 - (3) The development has been inspected and approved by all applicable city divisions.
 - (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) ~~Development and/or redevelopment of an area of more than 10,000 square feet of impervious surface; Construction of new impervious area greater than 10,000 square feet;~~
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)



TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager
City of Fayetteville Long Range Planning Committee

MEETING DATE: July 22, 2024 **Updated with results from 7/22/2024 PC Meeting**

SUBJECT: **ADM-2024-0036: Administrative Item (Amend UDC Chapters 166.01, Development Categories, 166.02, Development Review Process, 169.03, Review and or Permits Required, Exceptions):** Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.01, 166.02, and 169.03. The proposed code changes would modify development process requirements.

RECOMMENDATION:

Staff recommend forwarding **ADM-2024-0036** to the City Council with a recommendation of approval.

RECOMMENDED MOTION:

*"I move to forward **ADM-2024-0036** to the City Council with a recommendation of approval."*

BACKGROUND:

In 2021, major ordinance changes were approved by City Council to revamp drainage and development standards, with a secondary goal of incentivizing infill. The changes that were approved required new green stormwater practices on a sliding scale of added impervious surface, and decoupled certain requirements from a question of use and tied those requirements instead to the overall impact to stormwater. This introduced three new levels of development threshold and shifted the requirement of a large-scale development plan or a site improvement plan to be triggered only after the addition of 10,000 sq. ft. of added, new impervious surface. In the intervening period since 2021, staff audited the outcomes of these changes, and identified several areas that require revision and clarification.

- Parkland Dedication
 - Certain project types were no longer subject to parkland dedication, even though the impact of added units is significant.
- Project Classification
 - Projects adding less than 10,000 sq. ft. still often require a coordinated, cross-divisional round of review/comment leading to delays unforeseen issues at permitting.
- Application of Tree Preservation standards
 - Certain projects are no longer subject to tree preservation requirements.
- Timeliness of Variances and Appeals
 - Variances are only permitted to be appealed with an overall project, rather than piecemeal. This becomes an issue when certain development types are no longer subject to large-scale development or site improvement plan.

Staff, Planning Commission, and Council have evaluated three of the four areas, and ordinance changes have been brought forward throughout 2024.

Status:

- **Parkland Dedication:**
 - May 21, 2024: City Council approves changes to Parkland Dedication requirements, tying those requirements to added residential units and decoupling from project type. (Ordinance 6751)
- **Application of Tree Preservation Standards:**
 - July 16, 2024: City Council heard the proposed changes to Tree Preservation requirements, which would require an abbreviated tree preservation plan for projects adding between 1,201 – 6,000 square feet of impervious surface. An option for escrow is also permitted to be considered. The item was left on the first reading for additional consideration.
- **Timeliness of Variances and Appeals:**
 - July 16, 2024: City Council approved proposed changes to the appeals process, which will allow variances associated with administratively-approved projects to be appealed to City Council in their own right, without the need to be tied to an overall project.

The changes presented with this application are to overarching project classification requirements, and they are outlined below. These changes were forwarded by the Long-Range Planning Committee on June 20, 2024.

DISCUSSION:

After deliberation at the Long-Range Planning Commission meeting, Planning Commissioners voted to move forward the proposed changes to the project classifications

- Reclassifying a large-scale development, large site improvement plan, and small site improvement plan to be tied to the amount of development and/or redevelopment of *total* impervious surface area being proposed, rather than being tied solely to the addition of *new* impervious surface. The intent of this change is for this development or redevelopment area to be considered as the overall limits of construction for a proposal and is not intended to be triggered by interior remodels or renovations that do not propose or require any additional exterior work.
- Requiring a concept plan when a project proposes to develop and/or redevelop greater than *total* 6,000 square feet and less than 10,000 square feet of impervious surface area.
- Clarifying that grading permits are required when a project is developing and/or redeveloping more than 10,000 square feet of impervious surface area.

Staff is also incorporating some text clean-up with this proposal, including clarification about public meeting and hearing requirements for certain project types (large-scale developments and planned zoning districts, in particular).

Public Comment: Staff distributed the larger ordinance changes to key stakeholders within the development community. Feedback was received in relation to vested interest of projects that may already be in the pipeline, and feedback was received in relation to parkland dedication requirements. The City Attorney's office confirmed that vested interest in this or in any ordinance happens at the time of an approved or issued permit. Public comment was also provided at the

May 13, 2024 Planning Commission meeting as well as at the June 24 Planning Commission meeting. Members of the public who spoke were concerned about the originally proposed changes to the impervious surface thresholds and to the additional tree preservation requirements. Additional public comment was received by City staff ahead of the July 16 City Council meeting, with concerns regarding added cost to development with proposed changes, specifically with regards to additional tree preservation requirements.

RECOMMENDATION: Staff recommend forwarding ADM-2024-0036 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>July 22, 2024</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: Cabe		with a recommendation of approval.			
Second: McGetrick					
Vote: 8-0-0					

BUDGET/STAFF IMPACT:
None

Attachments:

- **Proposed Ordinance (Clean):**
 - UDC §166.01. Development Categories
 - UDC §166.02, Development Review Process
 - UDC §169.03, Review and/or Permits Required; Exceptions
- **Proposed Ordinance (Strikethrough):**
 - UDC §166.01. Development Categories
 - UDC §166.02, Development Review Process
 - UDC §169.03, Review and/or Permits Required; Exceptions

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to a development and/or redevelopment area of more than 10,000 square feet of impervious surface and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and developing and/or redeveloping an area of more than 10,000 square feet of impervious surface;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious area or a development on a site in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

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- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size and proposes a development and/or redevelopment area of more than 10,000 square feet of impervious surface. .
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
 - (ii) A development and/or redevelopment area of more than 10,000 square feet of impervious surface on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious surface and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review. .

(D) *Modifications.*

- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.

(Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) *Application Submittal*

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) *Public Meetings.* Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, concurrent plat, and concept plan. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments..
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development forwarded by the Subdivision Committee, preliminary plat, concurrent plat, and planned zoning district with or without concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council.

(C) *Approval and Denial Criteria*

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.
 - (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:

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- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
 - (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
 - (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
 - (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
 - (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.
 - (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final

approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.

(2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:

- (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
- (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.

(E) *Building Permits.*

(1) Before a building permit is issued the developer shall:

- (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
- (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
- (c) Comply with all applicable zoning and development codes.
- (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.

(2) In addition to §166.02(E), before a building permit is issued for site that develops and/or redevelops between 1,201 and 10,000 square feet of impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures

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(Supp. No. 33)

Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201— 6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001— 10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

(F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:

- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
- (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
- (3) The development has been inspected and approved by all applicable city divisions.
- (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

169.03 Review And/Or Permits Required; Exceptions

- (A) *Grading Review Required.* (Reference §166.02(E).)
- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
 - (2) Construction of greater than 1,200 square feet of impervious area on a single site;
- (B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) Development and/or redevelopment of an area of more than 10,000 square feet of impervious surface;
 - (3) A grading permit pursuant to this chapter; and
 - (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)

166.01 Development Categories

- (A) *Property Line Adjustment.* A property line adjustment is a transfer or adjustment of a property line or lines between adjoining property owners which does not create a separate, new lot. A property line adjustment cannot dedicate new easements or right-of-way.
- (B) *Subdivision of Land.*
- (1) *Lot Split.* When a property is to be subdivided into two (2), three (3) or four (4) lots, parcels the application may be processed as a lot split. Except for lot splits created pursuant §164.22 Cluster Housing Development, (C) *Development Review Process*, after the creation of more than four (4) lots from an original parent tract as established under Washington County's countywide 1985 reappraisal. Any subsequent subdivision of the parent or resulting tracts is required to be processed as a preliminary/final plat or concurrent plat. A lot split may dedicate new easements or right-of-way and may be combined with an easement plat.
 - (2) *Preliminary Plat.* When a property is to be subdivided into more than four (4) lots or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, the application shall be processed as preliminary plat. A preliminary plat establishes the preliminary location of lot lines, streets, and utility infrastructure, and allows for the applicant to request construction plan approval and install required improvements.
 - (3) *Final Plat.* After completion of the required infrastructure (water, sewer, storm drainage, utilities, street improvements, etc.) for a preliminary plat, the entity subdividing may submit an application for approval of the final plat. The final plat application may not be submitted until the final inspection for the required infrastructure has been scheduled with City Engineering staff.
 - (4) *Concurrent Plat.* A concurrent plat combines the preliminary and final plat into one (1) step. A concurrent plat is permitted when a property is to be subdivided into more than four (4) lots, or when a parent or resulting tract has been subdivided three (3) or more times and is proposed to be further subdivided, and the existing and new parcels do not require construction of new infrastructure.
- (C) *Site Plan.*
- (1) *Large Scale Development.* A large scale development is generally intended for development on a site of 1 acre or greater in size and proposes to ~~create more than 10,000 square feet of impervious area a~~ development and/or redevelopment area of more than 10,000 square feet of impervious surface and where a corresponding subdivision of land is not proposed.
 - (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a large-scale development:
 - (i) A site 1 acre or greater in size and ~~creating more than 10,000 square feet of new impervious area~~ developing and/or redeveloping an area of more than 10,000 square feet of impervious surface;
 - (ii) Facilities emitting odors or handling explosives; and
 - (b) *Excluded Developments.* ~~Developments creating less than 10,000 square feet of new impervious area or a development on a lot or parcel~~ Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious area or a development on a site in a zoning district subject to administrative approval.
 - (2) *Large Site Improvement Plan.* A large site improvement plan review is intended for a large scale development that is located on a site within a zoning district that permits administrative approval. A

large site improvement plan is subject to the requirements and excluded developments for a large scale development listed in Fayetteville Unified Development Code §166.01(C)(1).

- (3) *Small Site Improvement Plan.* A small site improvement plan review is intended for development on a site that is less than 1 acre in size ~~and proposes a development and/or redevelopment area of more than 10,000 square feet of impervious surface. with greater than 10,000 square feet of new impervious area.~~
- (a) *Requirement.* The development of the following must be processed in accordance with the requirements for a small site improvement plan:
- (i) A development that is excluded from large scale development or large site improvement plan review and requires review by multiple city divisions;
 - (ii) ~~A development and/or redevelopment area of more than 10,000 square feet of impervious surface~~ The creation of more than 10,000 square feet of impervious area for a development on site of less than 1 acre within any zoning district.
- (b) *Excluded Developments.* ~~The construction of less than or equal to 10,000 square feet of new impervious area shall be exempt from the site improvement plan requirements~~ Proposals developing and/or redeveloping an area of 10,000 square feet or less of impervious surface and shall be submitted in accordance with the requirements of §166.02(E) and §166.15.
- (4) *Concept Plan.* ~~When a developer intends to develop or redevelop greater than 6,000 square feet and less than 10,000 square feet of total impervious area within the city limits, they shall submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review. Developments below or above this threshold, or in the city's planning area boundary, may submit a concept plan to obtain feedback and recommendations prior to submitting a fully engineered development plan for review. When a developer intends to subdivide property within the city or city's planning area boundary, he/she shall submit a concept plan to obtain feedback and recommendations from city staff prior and the Planning Commission to submitting a fully engineered development plan for review. When a developer intends to develop greater than 10,000 square feet of new impervious area within the city or city's planning area boundary, they may submit a concept plan to obtain feedback and recommendations from city staff prior to submitting a fully engineered development plan for review.~~

(D) *Modifications.*

- (1) *Minor Modifications.* The Zoning and Development Administrator may authorize minor modifications in an approved subdivision of land or site plan. Minor modifications shall include, but are not limited to, substitutions of one approved structural type for another, minor variations in placement of buildings in such a way that the overall limits of approved floor area, open space, or rooms per acre are not increased, and minor shifts in property line locations.
- (2) *Major Modifications.* In the event that a developer wishes to make major modifications to an approved development, such modifications shall be submitted to the approving body of the subdivision or site plan, whether staff, Subdivision Committee, or the Planning Commission. After submission, the approving body shall approve or disapprove the requested modification.

(Code 1965, App. C., Art. II, §§A—D; Ord. No. 1750, 7-6-70; Ord. No. 2581, 12-4-79; Ord. No. 2789, 1-18-82; Code 1991, §§159.010; 159.11(C), 159.12, 159.13; 159.14; Ord. No. 3781, §1, 4-19-94; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4350, §1, 11-20-01; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 5945, §16, 1-17-17; Ord. No. 6067, §1, 5-1-18; Ord. No. 6446, §8(Exh. C), 6-15-21)

166.02 Development Review Process

(A) Application Submittal

- (1) *Submittal.* All development applications shall be submitted to the Planning Division and will be processed for review in accordance with Planning Division operating procedures.

(B) Public Meetings. Development applications are required to be processed through the Technical Plat Review Committee, Subdivision Committee, and Planning Commission as follows:

- (1) *Technical Plat Review Committee.* The following development applications are required to be reviewed by the Technical Plat Review Committee: Lot split, small site improvement plans, large site improvement plans, large scale development, planned zoning district with or without concurrent development, preliminary plat, final plat, ~~and concurrent plat, and concept plan~~. After the Technical Plat Review Committee meeting staff may administratively approve lot splits, final plats, small site improvement plans, and large site improvement plans after review for compliance with all applicable codes subject to UDC 166.02(C). No approval is necessary for concept plans.
- (2) *Subdivision Committee.* The following development applications are required to be reviewed by the Subdivision Committee: Large scale development, planned zoning district with concurrent development, preliminary plat, and concurrent plat. From these applications, the Subdivision Committee may approve only large scale developments. ~~Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Subdivision Committee.~~
- (3) *Planning Commission.* The following development applications are required to be reviewed by the Planning Commission. Large scale development forwarded by the Subdivision Committee, Preliminary plat, concurrent plat, and planned zoning district with or without concurrent development. The Planning Commission may approve, deny, table, or approve development applications with conditions. A planned zoning district cannot be approved by the Planning Commission, but may be forwarded to City Council. ~~Large scale development applications that are subject to administrative approval shall not be required to be reviewed by the Planning Commission.~~

(C) Approval and Denial Criteria

- (1) *Administrative Approval.* The following applications shall be approved administratively by the Planning Division as long as the proposal meets all requirements of the Unified Development Code: Property line adjustment, lot split, final plat, small site improvement plan, and large site improvement plan. Approval by the Planning Commission for these applications is not required unless an appeal is filed in accordance with Ch. 156 of the UDC. Concept plans are not subject to approval or denial.
 - (a) *Reasons for Denial.* The Planning Division may refuse administrative approval based on the following criteria:
 - (i) *Property Line Adjustment; Lot Split.* The application does not comply with zoning and development requirements including, but not limited to: Lot width, lot area, setback requirements, buildable area, required parking, impervious surface, dedication of required right-of-way or easements, etc., or the requested action would make an existing non-conforming property or structure more non-conforming.
 - (ii) *Final Plat.* The conditions of approval of the preliminary plat have not been met, the proposed plat does not meet the zoning and development requirements of the UDC, and/or the required improvements have not been completed or guaranteed in accordance with Fayetteville Unified Development Code Chapter 158.

-
- (iii) *Small or Large Site Improvement Plans.* The Planning Division may refuse to approve a small or large site improvement plan for any of the following reasons:
- (a) The development plan is not submitted in accordance with the requirements of this chapter.
 - (b) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (c) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (d) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factor such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (e) City water and sewer is not readily available to the property within the site improvement plat area and the developer has made no provision for extending such service to the development.
 - (f) The developer refused to comply with ordinance requirements or condition of approval for on-site and off-site improvements.
- (2) *Subdivision Committee and Planning Commission Approval.* The following applications shall be approved by the Subdivision Committee or Planning Commission, subject to the criteria listed below: Large scale development, preliminary plat and concurrent plat.
- (a) *Reasons For Denial.* The Subdivision Committee or Planning Commission may refuse to approve a large scale development, preliminary plat or concurrent plat for any of the following reasons:
- (i) The plat or development plan is not submitted in accordance with the requirements of this chapter.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by this chapter.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development, preliminary plat, or concurrent plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with ordinance requirements or conditions of approval for on-site and off-site improvements.
- (D) *Plat Recordation or Construction Plan Approval.* After obtaining approval by the appropriate governing body, the applicant shall follow the procedures set forth below in order to record the plat or obtain construction plan approval.

-
- (1) *Property Line Adjustment, Lot Split, Building Permit, Final Plat, Concurrent Plat.* The applicant shall submit copies of the approved plats containing all required signatures to the Planning Division for final approval. The plats shall be recorded by the applicant and copies of the recorded plats provided to the Planning Division as required.
 - (2) *Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plan.* Receipt of the approval authorizes the applicant to proceed with:
 - (a) The preparation of plans, reports and specifications in accordance with City Engineering requirements including but not limited to:
 - (i) Street plans, profiles and specification accompanied by soil analyses and design calculations;
 - (ii) Storm drainage plans, profiles and specifications accompanied by soil analyses and design calculations; and
 - (iii) Water and sewer plans, profiles and specifications, accompanied by design calculations, to be reviewed and approved by City Engineering.
 - (iv) Final site plans, landscape plans, and other plans, reports and specifications required by the city to obtain approval.
 - (b) Once all approvals that are required have been obtained, the applicant may proceed with site preparation and construction in accordance with the permitted plans.
- (E) *Building Permits.*
- (1) Before a building permit is issued the developer shall:
 - (a) Dedication of Right-of-Way. Dedicate right-of-way in compliance with the city's Master Street Plan, and in compliance with the requirements for on or off-site improvements.
 - (b) Dedicate all easements necessary to serve the development as required by the utility providers and the city. This may be completed by easement plat or separate easement document(s), with approval of the Planning Division.
 - (c) Comply with all applicable zoning and development codes.
 - (d) In addition, for small site improvement plans, large site improvement plans and large scale developments, the developer shall:
 - (i) Obtain approval from the appropriate governing body.
 - (ii) On and Off-Site Improvements. Construct or guarantee required on- and off-site improvements in accordance with UDC Chapter 158.
 - (iii) Complete applicable conditions of approval.
 - (2) In addition to §166.02(E), before a building permit is issued for site that ~~creates-develops and/or redevelops~~ between 1,201 and 10,000 square feet of ~~new~~ impervious area, where a corresponding subdivision of land is not proposed, the developer shall complete, and receive approval of, appropriate grading and drainage documentation demonstrating compliance with UDC Chapters 169 and 170 as well as the current City Drainage Criteria Manual per the table below. Impervious areas will be considered as existing only if they are in place on March 3, 2021 which corresponds with the City of Fayetteville 2021 imagery.

Required Mitigation Measures and Documentation by Development Threshold			
Development Threshold	City-wide Standard	Grading and Drainage/ Stormwater Documentation	Water Quality, Flood, and Tree Mitigation Measures
Level 1	< or = 1,200 sf of IA	Exempt from Grading and Drainage provisions except for those still associated with the Building Permit process such as HHOD	Exempt
Level 2	1,201—6,000 sf of IA	- Completed Green Stormwater Practice (GSP) Worksheet, demonstrating Runoff Reduction via Better Site Design. - GSP Operation & Maintenance (O & M) Agreement to ensure the long-term functionality of these practices.	2 or more measures from Step 1 of Table 2 that Reduce Runoff via Better Site Design 1 or more Green Stormwater Practices (GSPs) measures from Step 2 of Table 2 as required to treat 100% of the proposed additional impervious and gravel areas.
Level 3	6,001—10,000 sf of IA	Same as Level 2.	- Same as Level 2. - As needed GSP measures from Step 3 to further reduce runoff referred to as extended detention - Abbreviated Tree Preservation Plan

- (F) *Completion of Development/Certificate of Occupancy.* No certificate of occupancy for a large-scale development, large site improvement plan, or small site improvement plan shall be issued, and no final plat or concurrent plat shall be signed for recordation until the following have been completed:
- (1) The requirements for on and off-site improvements have been completed, and maintenance bonds/guarantees deposited to city specifications.
 - (2) An "as built" plot plan has been approved by the City Engineer (where applicable) showing:
 - (a) The location of all buildings and the setback distance for said buildings from street right-of-way and adjoining property lines;
 - (b) The location of any freestanding signs and the setback distance of said signs from street right-of-way and adjoining property lines;
 - (c) The location, number, dimensions, and surfacing of all parking spaces and of all screens or fences;
 - (d) The location and size of all water, sewer, gas, electric, telephone, and television cable lines;
 - (e) The location and size of all stormwater features with associated drainage easements demarcated, where applicable; and
 - (f) The location and quantity of existing and new impervious area on the property.
 - (3) The development has been inspected and approved by all applicable city divisions.
 - (4) All applicable conditions of approval have been completed.

(Code 1965, App. C., Art. II, §§F—H; Ord. No. 2581, 12-4-79; Code 1991, §§159.16—159.18; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14; Ord. No. 6061, §2, 4-17-18; Ord. No. 6446, §8(Exh. C), 6-15-21; Ord. No. 6539, §5(Exh. A), 3-1-22)

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(Supp. No. 33)

169.03 Review And/Or Permits Required; Exceptions

(A) *Grading Review Required.* (Reference §166.02(E).)

- (1) When located within the Hillside/Hilltop Overlay District boundaries. Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary;
- (2) Construction of greater than 1,200 square feet of impervious area on a single site;

(B) *Grading Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:

- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
- (2) ~~Development and/or redevelopment of an area of more than 10,000 square feet of impervious surface; Construction of new impervious area greater than 10,000 square feet;~~
- (3) A grading permit pursuant to this chapter; and
- (4) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.

(C) *Exceptions to Permit Requirements.* Grading permits are not required for the following however the Minimum Erosion Control Requirements in §169.04 still apply:

- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
- (2) *Cemetery Graves.* Cemetery graves.
- (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
- (4) Other minor fill, clearing or grading for maintenance purposes such as landscaping that do not require the use of heavy construction equipment, French drains, yard grading, maintenance, farming, gardens, and similar activities.

(D) *Grading Permit Application and Approval.* No grading permit shall be issued until the Grading and Erosion & Sediment Control Plan, endorsed by an architect, landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.

(E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18; Ord. No. 6446, §11(Exh. F), 6-15-21)



MEETING OF AUGUST 13, 2024

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessica Masters, Development Review Manager

FROM: Melissa Evans, Urban Forester

SUBJECT: **VAC-2024-0016: Vacation (1001 W. BULLDOG BLVD/FAYETTEVILLE PUBLIC SCHOOLS, 522): Submitted by MCCLELLAND CONSULTING ENGINEERS INC for property located at 1001 W. BULLDOG BLVD. in WARD 1. The property is zoned P-1, INSTITUTIONAL and contains approximately 18.01 acres. The request is to vacate 0.61 acres of a tree preservation easement.**

RECOMMENDATION:

Staff recommends denial of the vacation of the tree preservation easement as shown in Exhibit A1. While the applicant intends to dedicate an additional tree preservation easement in exchange (Exhibit A2), Urban Forestry finds that the loss of canopy on the Fayetteville High School property would be detrimental to the health of the local ecosystem and would undermine the integrity of the tree preservation ordinance.

BACKGROUND:

The tree preservation easement on parcel number 765-14448-000 was dedicated as part of the redevelopment of the Fayetteville High School Large Scale Development in 2011. The trees were placed in a tree preservation easement to meet the development requirements on the 18-acre lot (Exhibit B).

Request: The applicant wishes to vacate 0.61 acres of tree preservation easement to facilitate developing a parking deck on the property (Exhibit D). According to UDC section 167.04(L)(2), "The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville." In exchange for the vacation, the applicant intends to dedicate an additional tree preservation easement off-site as described in Exhibit C. The proposed tree preservation easement is on parcel number 765-14295-002 and is located on Fayetteville School District property directly south of Happy Hollow Elementary School.

DISCUSSION:

Staff visited the high school property and determined that the existing oaks in the tree preservation easement are in good condition and of substantial age at 100 years or more. In the interim, staff received additional information from the applicant indicating signs of stress and decay on the trees. Staff intends to re-visit the site to confirm the applicant's findings of the overall tree health prior to the planned City Council meeting (Exhibit E).

These are the largest trees in the immediate area of the Fayetteville school campus. The adjacent University

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

campus has some large oak trees as well. The current tree preservation easement is in an institutional district and is surrounded by additional P-1 zoning, some C-2 and CS zoning and RMF-40 zoning. The current location offers 0.61 acres of ecosystem services and green space in a fairly dense urban area.

The 2.25-acre portion of parcel 765-14295-002 that is proposed as a new tree preservation easement is located on the east side of the city near S. Ray Avenue, adjacent to another Fayetteville School District parcel and undeveloped land. The proposed easement area is south of Happy Hollow Elementary School and adjacent to an existing tree preservation easement.

Tree canopy assessment for each site:

- Tree canopy within the current easement consists of seven large white oak trees ranging in size from 25"-32" DBH and various smaller trees (Exhibit A1). The oak trees have been on the site since at least 1926 (the earliest aerial photography available on the City of Fayetteville GIS maps).
- Tree canopy at proposed easement consists of smaller trees that are a mix of oak, hickory, elm and cedar (Exhibit A2). Half of this property was a field according to 1978 aerial photography and the rest were likely pioneer species (trees that are the first to colonize sites that have been disturbed or cleared).

Staff believes that the proposed easement does not have the same size and quality of trees as the existing easement. Fayetteville would be losing ecosystem services in a highly developed area of our city if this vacation is approved. Staff is also concerned about the precedent that vacating the easement would set. Tree preservation easements are a standard requirement for development and are intended to remain in perpetuity, not until they are no longer viable due to the owner's wish to expand and develop more.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF (#3), Exhibit A1 - Tree Preservation Easement To Be Vacated (0.61 Acres) (#4), Exhibit A2 - Tree Preservation Easement To Be Dedicated (2.25 Acres) (#5), Exhibit B - Recorded Easement Plat (#6), Exhibit C - Applicant Request Letter (#7), Exhibit D - Parking Deck Site Plan (#8), Exhibit E - Easement Locations With Applicant's Tree Health Findings (#9)

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 #: 2024-417

VAC-2024-0016: Vacation (1001 W. BULLDOG BLVD/FAYETTEVILLE PUBLIC SCHOOLS, 522): Submitted by MCCLELLAND CONSULTING ENGINEERS INC for property located at 1001 W. BULLDOG BLVD. in WARD 1. The property is zoned P-1, INSTITUTIONAL and contains approximately 18.01 acres. The request is to vacate 0.61 acres of a tree preservation easement.

AN ORDINANCE TO APPROVE THE VACATION OF 0.61 ACRES OF A TREE PRESERVATION EASEMENT LOCATED AT 1001 WEST BULLDOG BOULEVARD IN WARD 1 IN EXCHANGE FOR THE FAYETTEVILLE SCHOOL DISTRICT'S OFFER TO DEDICATE AN ADDITIONAL 2.25 ACRES OF TREE PRESERVATION EASEMENT

WHEREAS, the Fayetteville School District would like to vacate approximately 0.61 acres of the existing tree preservation easement to facilitate developing a parking deck on the property; and

WHEREAS, the Fayetteville School District has offered to dedicate 2.25 acres of tree preservation easement in exchange located on the east side of the city near S. Ray Avenue, adjacent to another Fayetteville School District parcel and undeveloped land.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that the 0.61 acres owned by the Fayetteville School District covered by a dedicated tree preservation easement has proven to the City Council's satisfaction that such vacation of that portion of the tree preservation easement is in the best interest of the City of Fayetteville and therefore grants the Fayetteville School District's request to vacate the existing tree preservation easement as to those 0.61 acres.

Section 2: The vacation and abolishment of the tree preservation easement is conditioned upon the dedication of 2.25 acres of tree preservation easement, as shown in the Easement Plat (Exhibit B) and the legal description (Exhibit E) attached to this Resolution.

City of Fayetteville Staff Review Form

2024-417

Item ID

8/20/2024

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

Jonathan Curth

8/2/2024

DEVELOPMENT SERVICES (620)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

VAC-2024-0016: Vacation (1001 W. BULLDOG BLVD/FAYETTEVILLE PUBLIC SCHOOLS, 522): Submitted by MCCLELLAND CONSULTING ENGINEERS INC for property located at 1001 W. BULLDOG BLVD. in WARD 1. The property is zoned P-1, INSTITUTIONAL and contains approximately 18.01 acres. The request is to vacate 0.61 acres of a tree preservation 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:

EXHIBIT 'A1'

0 20 40
SCALE 1" = 40'

NW CORNER
SW 1/4 SW 1/4
SECTION 16
T 16 N R 30 W

WEST BULLDOG AVENUE VARIABLE WIDTH RIGHT OF
WAY 25' WIDE ASPHALT ROAD WITH CURB & GUTTER

SOUTH STADIUM DRIVE VARIABLE WIDTH RIGHT OF WAY
31' WIDE ASPHALT ROAD WITH CURB & GUTTER

S87° 06' 56"E-30.77'
S87° 06' 56"E-92.11'

POB TREE PRESERVATION
AREA VACATION

N00° 02' 05"E-218.97'

TREE PRESERVATION AREA
(EASEMENT PLAT DOCUMENT
2011-00007587)

S00° 02' 05"W-158.00'

AREA TO BE VACATED
26682 SQ. FT.
0.61 AC.

S00° 02' 05"W-90.00'

N12° 23' 08"W-34.41'

N89° 57' 55"W-126.60'

LEGEND

765-14448-000 — TAX PARCEL NUMBER

411-202 — DEED RECORD

— R/W — EXISTING RIGHT-OF-WAY LINE



TREE PRESERVATION AREA
PER EASEMENT PLAT 2011-00007587
TO BE VACATED

BASIS OF BEARINGS: ARKANSAS STATE PLANE COORDINATE SYSTEM, NAD 83, NORTH ZONE. (NOT A PLAT OF SURVEY)

PROJ. MANAGER:	DRAWN BY:
CB	DB
DATE:	REVISION:
07/16/2024	
SCALE:	PROJ. NUMBER:
AS NOTED	242711

EXHIBIT "A" 1
MAP

FAYETTEVILLE HIGH SCHOOL
FAYETTEVILLE, ARKANSAS
FAYETTEVILLE SCHOOL DISTRICT # 1

MCE McCLELLAND
CONSULTING
ENGINEERS, INC.
1580 E. STEARNS ST.
FAYETTEVILLE, AR 72703
(479) 443-2377
HTTP://WWW.MCE.US.COM

EX-1

© 2024

EXHIBIT 'A2'

0 30 60
SCALE 1" = 60'

TREE PRESERVATION AREA PER
EASEMENT PLAT 2010-00021498

S79° 25' 32"E-433.16'

PROPOSED TREE PRESERVATION EASEMENT
98188 SQ. FT.
2.25 AC.

N02° 49' 46"E-258.77'

S02° 45' 43"W-198.65'

N87° 24' 11"W-429.45'

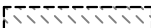
POB TREE PRESERVATION EASEMENT
SW CORNER TRACT A
PER TRACT SPLIT 2009-00027676

LEGEND

765-14295-002 ——— TAX PARCEL NUMBER

2009-27921 ——— DEED RECORD

——— EXISTING PROPERTY LINE

 PROPOSED TREE PRESERVATION
EASEMENT

BASIS OF BEARINGS: ARKANSAS STATE PLANE COORDINATE SYSTEM, NAD 83, NORTH ZONE. (NOT A PLAT OF SURVEY)

PROJ. MANAGER:	DRAWN BY:
CB	DB
DATE:	REVISION:
07/16/2024	
SCALE:	PROJ. NUMBER:
AS NOTED	242711

EXHIBIT "A" 2
MAP

HAPPY HOLLOW ELEMENTARY SCHOOL
FAYETTEVILLE, ARKANSAS

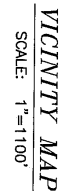
FAYETTEVILLE SCHOOL DISTRICT # 1

MCE McCLELLAND
CONSULTING
ENGINEERS, INC.
1810 N COLLEGE AVE.
FAYETTEVILLE, AR 72703
(479) 443-2377
HTTP://WWW.MCE.US.COM

EX-1

©2024

	CHORD DIRECTION	RADIUS	ARC LENGTH	CHORD LENGTH
(A)	N 06°46'56" W	3771.22'	53.82'	53.81'
(B)	S 06°58'37" E	3759.72'	27.47'	27.47'

[illegible]

REGISTERED
STATE OF
ARKANSAS
NO. 1130
TY G. DUNN
SURVEYOR
PROFESSIONAL LAND SURVEYOR

01/13/2011
DATE

Wm. R. Bly
ZONING AND BUILDING ADMINISTRATION

CERTIFICATE OF SURVEY & ACCURACY.

I HEREBY CERTIFY THAT THE PLAIN SHOW AND DESCRIBED LOT/SECTION IS A TRUE AND CORRECT STATEMENT OF THE ACTUAL LOT/SECTION AS SHOWN ON THE PLAT/SECTION AS REQUIRED BY THE SUBDIVISION REGULATIONS OF THE CITY OF FAIRFAXVILLE.

01-23-11
DATE

Tyrene G. Wilson
TYRENE G. WILSON - APLS NO. 1250

[illegible][illegible][illegible][illegible]

FAYETTEVILLE
HIGH SCHOOL
FAYETTEVILLE, ARKANSAS

MCE McCLELLAND
CONSULTING
ENGINEERS, INC.
DESIGNED TO SERVE

**EASEMENT
PLAY**

July 17, 2024

City of Fayetteville City Council
113 W. Mountain Street
Fayetteville, AR 72701

RE: Fayetteville High School Tree Preservation Easement Vacation

City Council,

Please accept this Tree Preservation Easement Vacation request for the Fayetteville High School. In response to the need for additional parking, The Fayetteville School District would like construct a new parking structure at the southwest corner of S Stadium Dr and W Bulldog Blvd, directly west of the school. Per the Unified Development Code, section 167.03, (7) white oaks were preserved in a prior building expansion phase and captured in a tree preservation easement.

Many factors were considered when selecting a location for the new parking structure. Safety, direct connectivity to the existing high school building, and connectivity and integration into the existing drop off and pickup traffic patterns were at the top of the list. Baring the tree preservation easement, this location serves the school's needs the best.

If allowed to be vacated, the .61-acre tree preservation easement on the high school property will be replaced with another tree preservation easement, 2.25 acres, on another property held by the Fayetteville School District, directly south of Happy Hollow Elementary. The larger easement is intended to compensate for the loss of the 25"-32" white oaks on the high school property. The proposed replacement easement consists of 100s of tree, however smaller in size. Species mainly consisting of oak, hickory, elm, and cedar.

Please see the attached documents showing the easement to be vacation and the easement to be dedicated. If you should have any questions, please do not hesitate to contact me. We appreciate your support of this project.

Sincerely,
McClelland Consulting Engineers, Inc.



Chris Bakunas
Land Development Department Head, Senior Associate
(479) 443.2377
cbakunas@mce.us.com

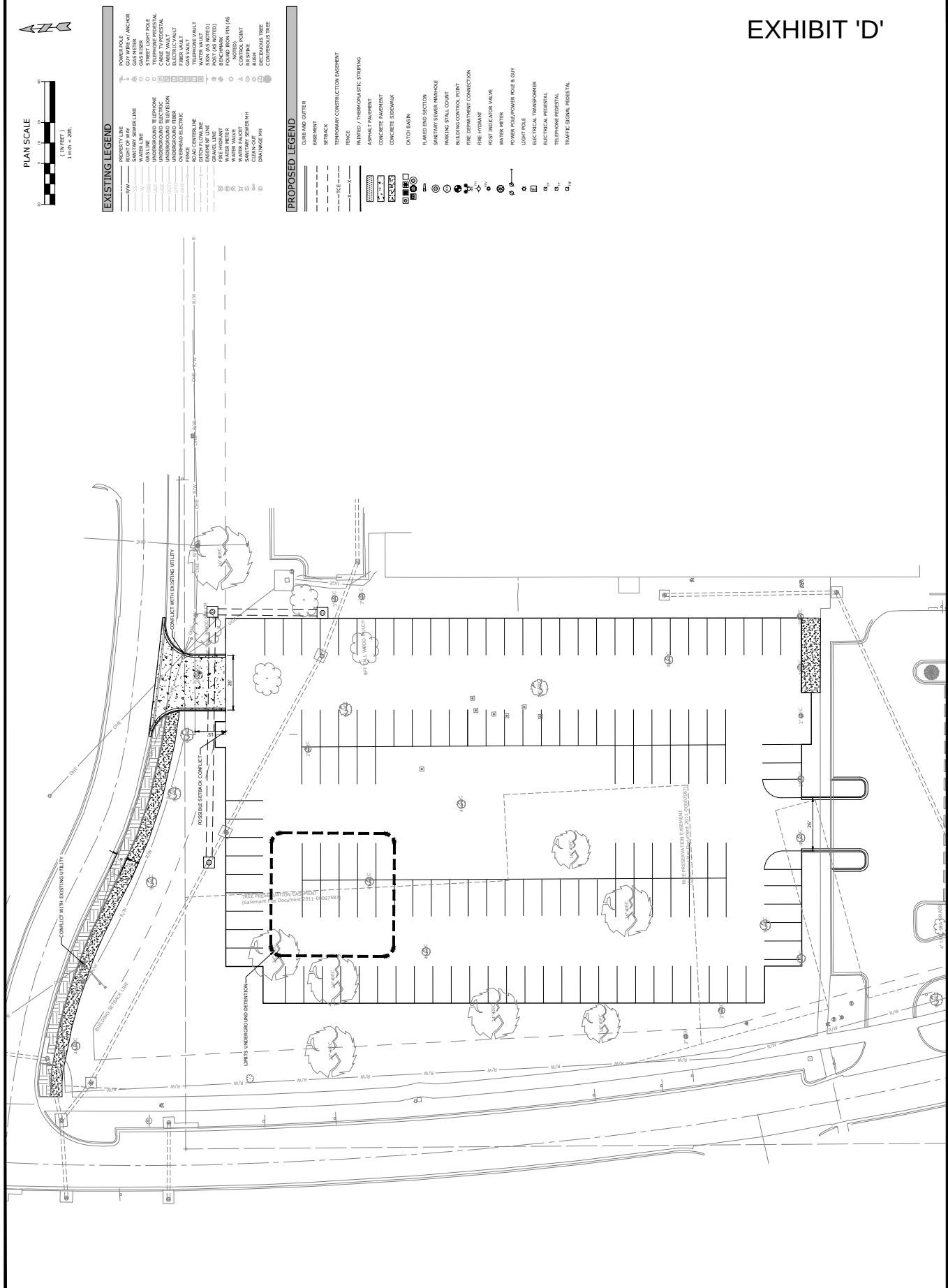
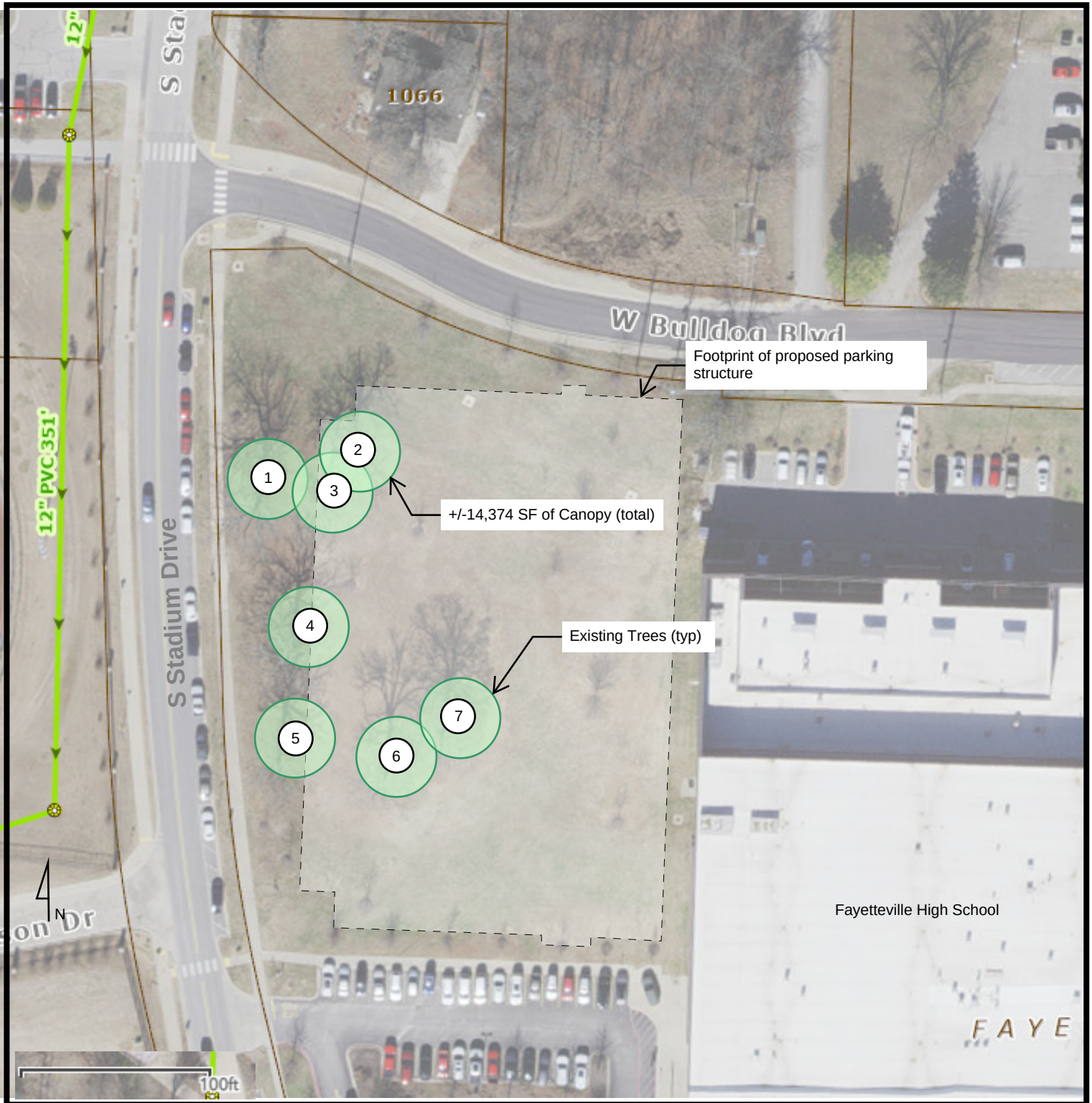


EXHIBIT 'E'
Easement to be Vacated (Fayetteville High School Property)



#	Species	DBH in Inches	Notes
1	White Oak	32	Poor structure, prior damage to crown
2	White Oak	30.5	Tree shows some sign of stress via dying leaves, crown previously removed, decay in upper third of canopy.
3	White Oak	32	Tree appears to be in good health other than showing some sign of stress via dying leaves
4	White Oak	35	Decay noted at root flare, hollow core, several areas of decay noted in canopy
5	White Oak	25	Good health
6	White Oak	30.5	Decay noted at root flare, showing some sign of stress via dying leaves, several areas of decay noted in canopy
7	White Oak	29.5	heartwood decay noted, several areas of decay noted in canopy
Total		214.5	

See corresponding photos below

EXHIBIT 'E'

Easement to be Vacated (Fayetteville High School Property)

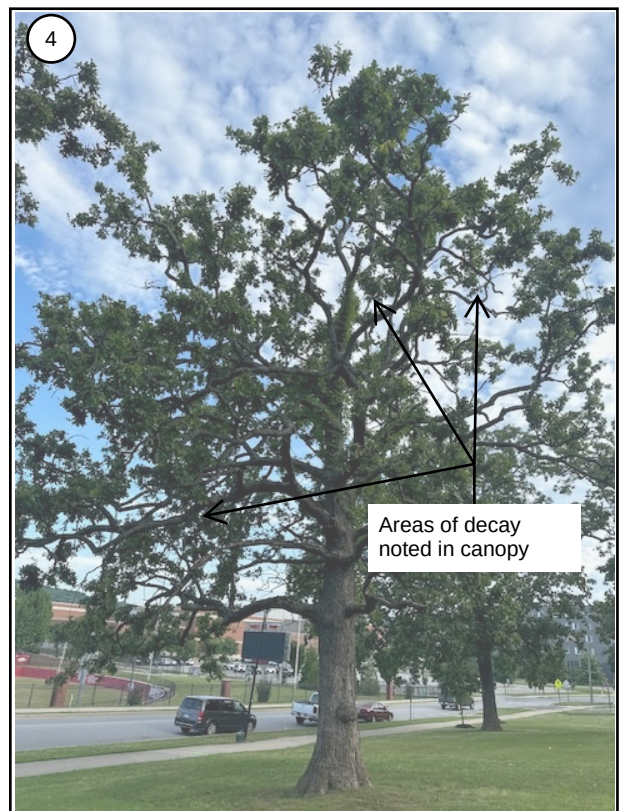
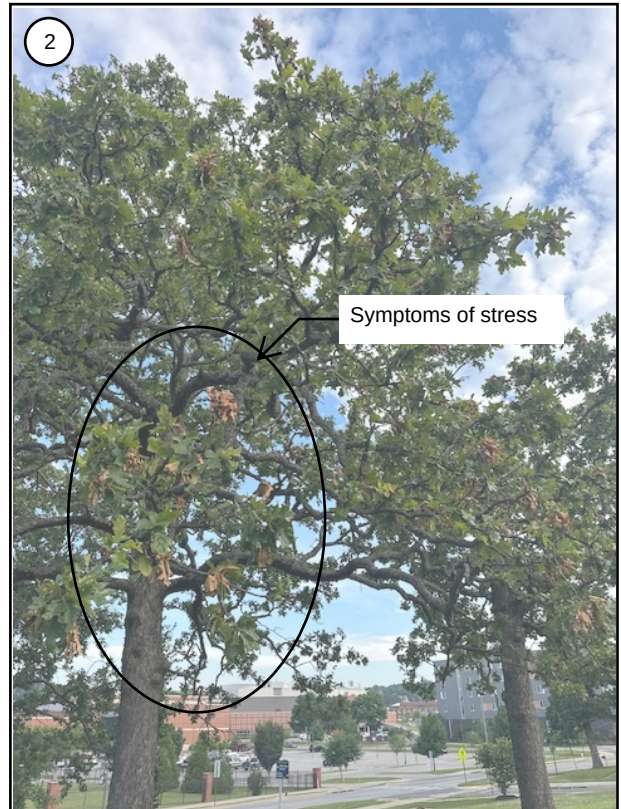
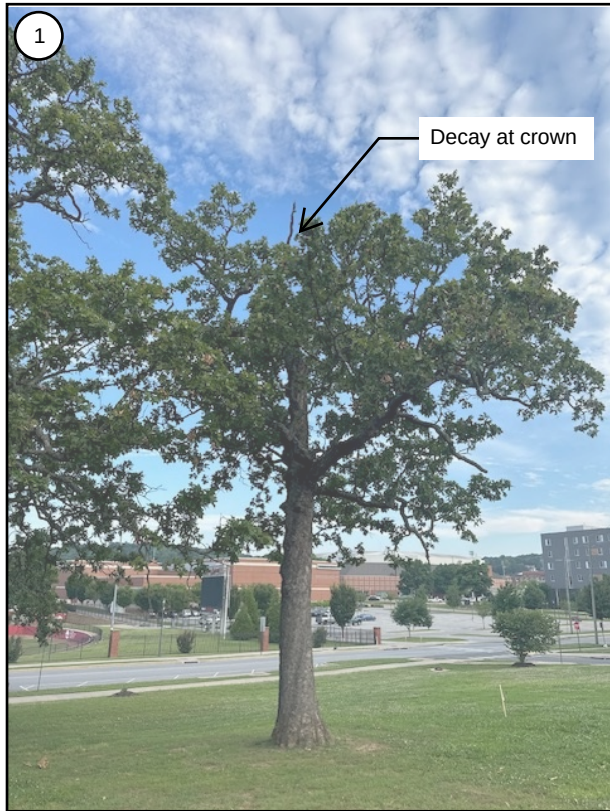


EXHIBIT 'E'
Easement to be Vacated (Fayetteville High School Property)

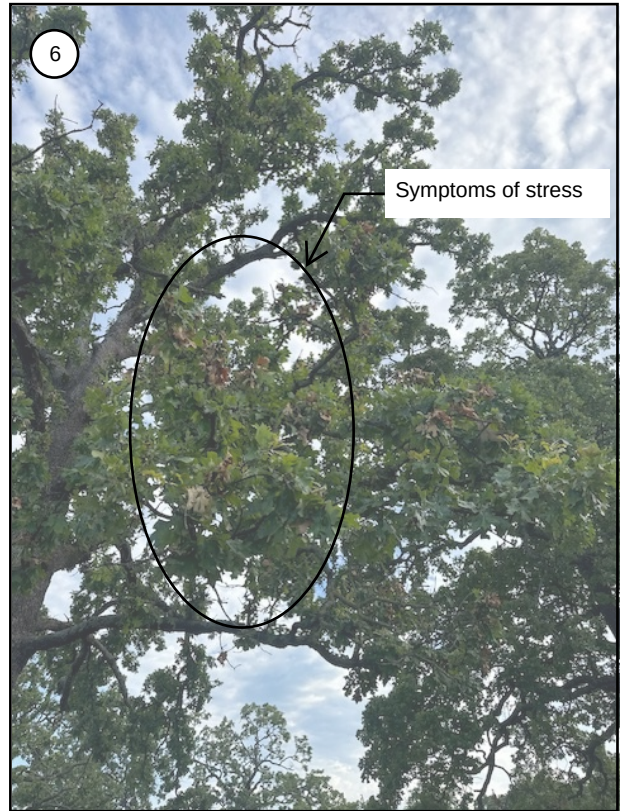


EXHIBIT 'E'

Easement to be Vacated (Fayetteville High School Property)

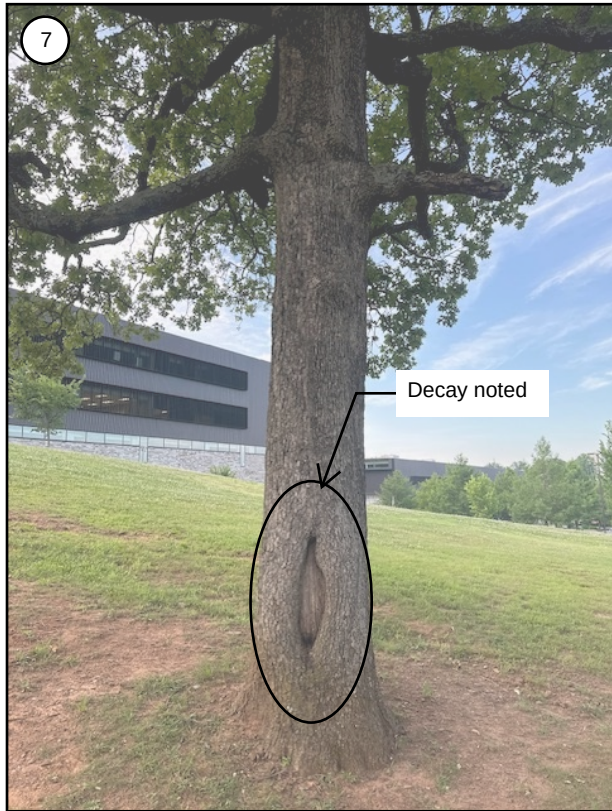
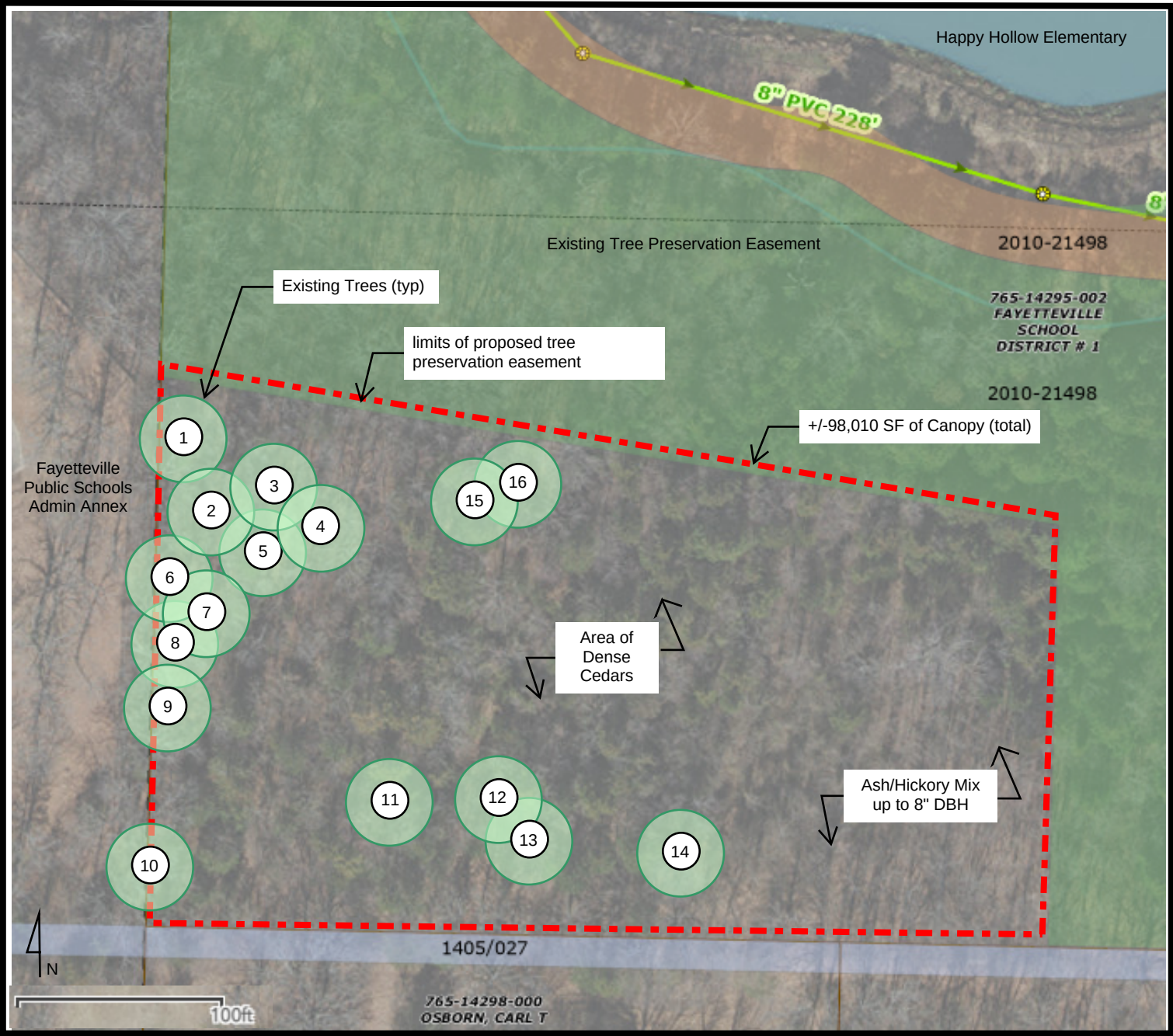


Exhibit - E
Proposed Easement (Happy Hollow Elementary Property)



#	Species	DBH in Inches	Notes
1	White Oak	22	Good health
2	Red Oak	10	Good health
3	Hickory	10	Good health
4	Hickory	10	Good health
5	White Oak	15	Good health
6	White Oak	15	Good health
7	White Oak	12	Good health
8	White Oak	22	Good health
9	White Oak	17	Good health
10	White Oak	18	Good health
11	Red Oak	12	Good health
12	Red Oak	12	Good health
13	Red Oak	12	Good health
14	Red Oak	15	Good health
15	Red Oak	18	Good health
16	Red Oak	18	Good health
Total		238	Only includes trees 12" or larger. Numerous other smaller trees existing on the site

See corresponding photos below

Exhibit - E
Proposed Easement (Happy Hollow Elementary Property)



Exhibit - E
Proposed Easement (Happy Hollow Elementary Property)





MEETING OF AUGUST 13, 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: RZN-2024-0030: Rezoning (N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD/WATSON, 480): Submitted by WATKINS, BOYER, GRAY & CURRY PLLC for property located on N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD. in WARD 4. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 6.62 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES - GENERAL.**

RECOMMENDATION:

City Planning staff recommend approval and the Planning Commission recommend denial of a request to rezone the subject property as described and shown in the attached Exhibits 'A' and 'B'.

BACKGROUND:

The subject property, parcel 765-14601-000, is immediately east of I-49 and approximately $\frac{3}{4}$ mile north of the intersection with E. Martin Luther King Jr. Blvd. The property has frontage along N. Futrall Drive, which is a one-way street heading north and is Arkansas Department of Transportation (ARDOT) right-of-way. The parcel contains 6.62 acres, and is currently zoned RSF-4, Residential Single-Family, 4 Units per Acre. The site is currently undeveloped and has almost 100% tree canopy coverage. The property is located within the I-540 Overlay District and a small portion of the site is within the Hillside-Hilltop Overlay District. A request to rezone the property to CS, Commercial Services, was submitted to the Planning Commission in January 2022, where it was denied. No appeal was heard by the City Council following the denial.

Request: The request is to rezone the property to NS-G, Neighborhood Services, General. The applicant has not submitted any additional development plans, though has amended their original request from CS, Community Services.

Public Comment: Written public comment has been received in opposition to the request and it is attached to this report. No members of the public spoke at the public hearings.

Land Use Compatibility: On the balance of considerations, staff finds the updated request to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre to NS-G to be compatible at this location. NS-G is a less intense zoning district than the originally-proposed CS, allows for minimal non-residential uses, and allows for up to 4-family dwellings by-right; larger multi-family structures (five connected units or more) would require a conditional use permit approval. NS-G also allows for buildings up to 3 stories tall as opposed to the 5 stories permitted under CS. With a future trail planned along Futrall Drive, this could eventually provide bike and pedestrian connectivity to and from this site and proposed developments closer to Wedington Drive

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

www.fayetteville-ar.gov

and existing developments closer to Martin Luther King Jr. Boulevard. Additionally, a rezoning to NS-G could allow for non-residential uses that may be of use to nearby developments. Conversely, much of the surrounding property is undeveloped, and the site lacks basic utility and infrastructure access such as public water and public sewer. The property currently has the entitlement to develop 4 units per acre; given the property's size, this may allow for the development of up to 26 single-family dwellings, though would likely result in fewer given the steep topography and any necessary right-of-way dedication, tree preservation, and drainage requirements. Staff recognizes that strictly single-family uses may not be the highest and most efficient use of the property at this location and may still negatively affect traffic flow along Futrell Drive.

Land Use Plan Analysis: Staff finds that generally a request to upzone this property is not consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. While there is not a stated neighborhood or comprehensive plan for this specific area, recent policy decisions in the surrounding area indicate an intention for this area to remain zoned as-is; a previous rezoning request to CS was denied by the Planning Commission in 2022. To the east of the property, a Bill of Assurance was granted with a downzoning to R-A in 2018 to conserve the area with no allowable home construction associated with that rezoning. To the north, the City of Fayetteville acquired approximately 61 acres of land from the University of Arkansas for the preservation of the Markham Hill Woods. The site has a low infill score and is called out as a Residential Neighborhood Area, with the implication that any development at this location is intended to be primarily residential, rather than commercial uses. Staff finds that NS-G does get closer to meeting long-term land use plans for the area than CS, since it is still categorized as a primarily residential zone, with allowances for the insertion of smaller-scale non-residential uses.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of 4 for this site. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, 990 S. Hollywood)
- Near City Park (Markham Hill Woods)
- Near Paved Trail (Shiloh Trail, across I-49, Fayetteville Traverse (unpaved)
- Near Razorback Bus Stop (Route 44)

DISCUSSION:

Due to scheduling conflicts, the applicant requested the item be tabled from the June 24th, 2024 Planning Commission meeting to July 8th.

On July 8th, the Planning Commission voted 7-0-0 to table the request to afford time to evaluate alternatives to the requested CS, Community Services zoning district.

Ultimately, the applicant amended their request to rezone the property from RSF-4 to NS-G, Neighborhood Services - General. At the July 22, 2024 Planning Commission meeting, a motion to forward the request to rezone the property to NS-G failed for lack of majority. The vote was tied at 4-4-0, with Commissioners Garlock, Gulley, Madden, and Werner opposed. Commissioners in opposition were concerned about the lack of available infrastructure on the property, access to surrounding amenities and transportation networks, and a desire to see the tree canopy and natural area maintained along the highway corridor. Commissioners in favor felt that RSF-4 was not an appropriate zoning district for the area and found that some zoning direction had to be given for the site after multiple attempts to rezone had failed. They agreed that NS-G was a reasonable request that allowed for creative solutions on an otherwise difficult-to-develop property (topography, lack of infrastructure, and connectivity issues). No members of the public spoke at the meeting.

BUDGET/STAFF IMPACT:

Mailing address:

113 W. Mountain Street
Fayetteville, AR 72701

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N/A

ATTACHMENTS: Appeal Letter (#3), Exhibit A (#4), Exhibit B (#5), Planning Commission Staff Report (#6)



City of Fayetteville, Arkansas

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

Legislation Text

File #: 2024-385

APPEAL: RZN-2024-0030: Rezoning (N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD/WATSON, 480): Submitted by WATKINS, BOYER, GRAY & CURRY PLLC for property located on N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD. in WARD 4. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 6.62 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 2024-30 FOR APPROXIMATELY 6.62 ACRES LOCATED AT ON NORTH FUTRALL DRIVE BETWEEN WEDINGTON DRIVE AND MLK BOULEVARD IN WARD 4 FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE 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 RSF-4, Residential Single-Family, Four Units per Acre 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.

WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER (OF COUNSEL)
JENNIFER E. GRAY, P.A.*
ANDREW T. CURRY, P.A.
WILL A. KELLSTROM, P.A.
MICHELLE FENDLEY
CATELYN J. GIBBS
* ALSO LICENSED IN MISSOURI

WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER
LIZBETH CHAVEZ, SECRETARY

July 23, 2024

City Council
Attn: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

Re: Appeal of Planning Commission Denial of RZN-2024-0030

To Whom it May Concern:

My name is Will Kellstrom and my firm represented the applicant, The Watson Family Trust ("Applicant"), in the aforementioned rezone. In RZN-2024-0030, the Applicant requested that the Property, Parcel No. 765-14601-000 be rezoned from RSF-4, Residential Single Family, Four Units Per Acre, to NS-G, Neighborhood Services General. That request was denied on July 22nd, 2024, with the Planning Commission voting 4-4 on a motion to forward the request to City Council, and the motion failing accordingly.

The Applicant wishes to appeal the decision of the Planning Commission to City Council, pursuant to §155.02 and §155.05 of the Fayetteville Code of Ordinances, on the grounds of the following errors by the Planning Commission:

- (1) Failure to Properly Consider Zoning and Use of Surrounding Properties
- (2) Failure to Properly Consider the Incompatibility of the Present Zoning
- (3) Failure to Properly Consider the Compatibility of the Proposed Zoning
- (4) Incorrect Determination of the Highest and Best Use of the Property

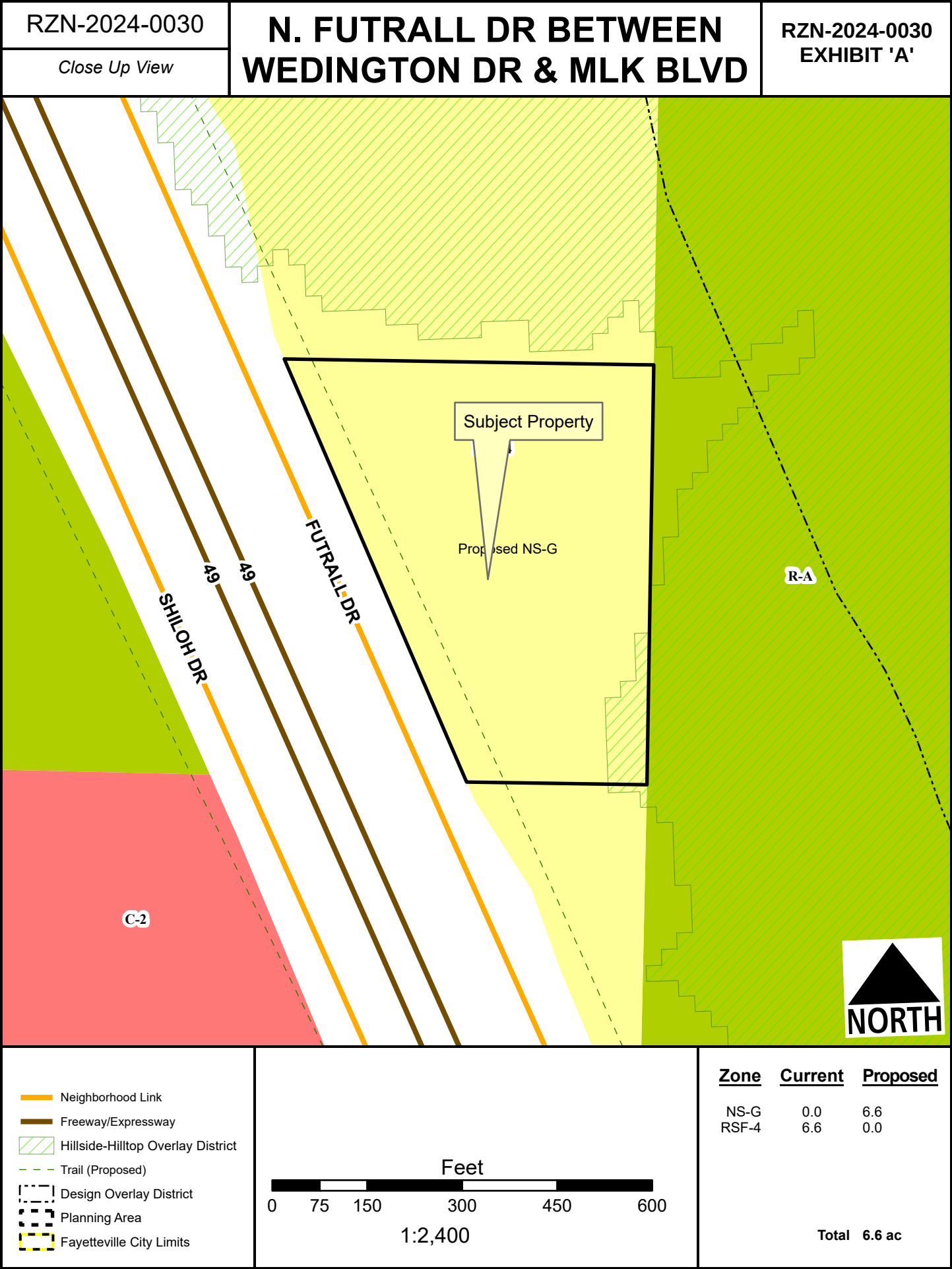
Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

/s/ Will A. Kellstrom

Will A. Kellstrom

WK:



RZN-2024-0030
EXHIBIT 'B'

LEGAL DESCRIPTION

GIS Approved

05/22/2024 11:49:08 AM

Part of the Southwest Quarter (SW $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 18, Township 16 North, Range 30 West, being more particularly described as follows, To-Wit: Beginning at the Southeast corner of said forty acre tract, and running thence N0°39'32"E 662.85', thence N89°20'28"W 641.83' to a point on the East Right-of-Way of U.S. Highway #71, thence S23°00'54"E 723.76', thence S89°20'28"E to the Point of Beginning, containing 7.56 acres.

Less and except the following described tract taken for highway purposes:

Part of the Southwest Quarter of the Northeast Quarter of Section 18, Township 16 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Starting at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 18; thence South 89°19' West along the South line thereof a distance of 351.7 feet to a point on the Easterly existing right of way line of U.S. Highway #71; thence North 24°42' West along said existing right of way line a distance of 32.8 feet to the point of beginning; thence continue North 24°42' West along said existing right of way line a distance of 210.6 feet to a point; thence North 25°05' West along said existing right of way line a distance of 323.2 feet to a point; thence North 21°54' West along said existing right of way line a distance of 156.4 feet to a point; thence North 89°19' East a distance of 58.8 feet to a point on the Easterly proposed right of way line of U.S. Highway #71; thence South 24° 51' East along said proposed right of way line a distance of 693.3 feet to a point; thence South 89°19' West a distance of 66.7 feet to the point of beginning and containing 0.96 Acre, more or less.



TO: Fayetteville Planning Commission

FROM: Jessie Masters, Development Review Manager

MEETING DATE: July 22, 2024 **Updated with results from July 22, 2024 PC Meeting**

SUBJECT: **RZN-2024-0030: Rezoning (N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD/WATSON, 480):** Submitted by WATKINS, BOYER, GRAY & CURRY PLLC for property located on N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 6.62 acres. The request is to rezone the property to NS-G, NEIGHBORHOOD SERVICES - GENERAL.

RECOMMENDATION:
Staff recommends approval of RZN-2024-0030.

RECOMMENDED MOTION:
"I move to forward RZN-2024-0030 to City Council with a recommendation of approval."

JUNE 24 AND JULY 8 PLANNING COMMISSION MEETINGS

Due to scheduling unavailability, the applicant requested to table themselves until the July 8 Planning Commission meeting in order to be present. At the July 8 meeting, the Planning Commission recommended tabling the item to re-evaluate the applicant's request, and see if there was a lower-intensity zoning district such as NS-L or NS-G that the applicant was willing to consider. The applicant has since updated the request to NS-G, Neighborhood Services - General.

BACKGROUND:

The subject property, parcel 765-14601-000, is immediately east of I-49 and approximately ¾ mile north of the intersection with E. Martin Luther King Jr. Blvd. The property has frontage along N. Futrall Drive, which is a one-way street heading north and is ARDOT right-of-way. The parcel contains 6.62 acres, and is currently zoned RSF-4, Residential Single-Family, 4 Units per Acre. The site is currently undeveloped and has almost 100% tree canopy coverage. The property is located within the I-540 Overlay District and a small portion of the site is within the Hillside-Hilltop Overlay District. An identical rezoning request was submitted to the Planning Commission in January 2022, where it was denied. No appeal was heard by the City Council following the denial. Surrounding land uses and zoning is depicted in *Table 1*.

Table 1 - Surrounding Land Use and Zoning

Direction	Land Use	Zoning
North	Undeveloped	RSF-4, Residential Single-Family, 4 Units per Acre
South	Undeveloped	RSF-4, Residential Single-Family, 4 Units per Acre
East	Undeveloped	R-A, Residential Agricultural; (Bill of Assurance requiring zero homes to be built)
West	Interstate (I-49)	R-A, Residential-Agricultural (across the interstate)

Request: The request is to rezone the property to NS-G, Neighborhood Services, General. The applicant has not submitted any additional development plans, though has modified their original request from CS, Community Services.

Public Comment: Staff received one written comment against the request to rezone the property to CS, and it is attached to this report. The member of the public was concerned about tree preservation on the property.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

Streets: The subject area has frontage along S. Futrall Drive. S. Futrall Drive 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 not available to the subject area.

Sewer: Sanitary sewer is not available to the subject area.

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 6, located at 900 S. Hollywood Ave., protects this site. The property is located approximately 1.2 miles from the fire station with an anticipated drive time of approximately 3 minutes using existing streets. The anticipated response time would be approximately 5.2 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: Any additional improvements or requirements for drainage will be determined at time of development. No portion of the site falls within a FEMA floodplain, nor is there a protected stream in the area. There are also no hydric soils on the property.

A small portion of the southeast corner of the property falls within the Hillside-Hilltop Overlay District. Additional restrictions will apply at the time of development. Engineered footing designs will be required at the time of building permit submittal, as well as grading, erosion control and abbreviated tree preservation plans.

Tree Preservation:

The proposed zoning district of NS-G, Neighborhood Services - General requires **20% minimum canopy preservation**. The current zoning district of RSF-4, Residential Single-Family, 4 Units per Acre, requires **25% 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 Area**.

Residential Neighborhood Areas are primarily residential in nature and support a wide variety of housing types of appropriate scale and context: single-family, duplexes, rowhouses, multifamily and accessory dwelling units. 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, such as retail and offices, on corners and along connecting corridors. This designation recognizes existing conventional subdivision developments which may have large blocks with conventional setbacks and development patterns that respond to features of the natural environment. Building setbacks may vary depending on the context of the existing neighborhood.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of 4 for this site, with a weighted score of 4.5. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station 6, 990 S. Hollywood)
- Near City Park (Markham Hill Woods)
- Near Paved Trail (Shiloh Trail, across I-49, Fayetteville Traverse (unpaved)
- Near Razorback Bus Stop (Route 44)

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 updated request from RSF-4, Residential Single-Family, 4 Units per Acre to NS-G to be compatible at this location. Much of the surrounding property is undeveloped in nature, and the site lacks basic utility and infrastructure access such as public water and public sewer. The property currently has the entitlement to develop 4 units per acre; given the property's size, this may allow for the development of up to 26 single-family dwellings, though would likely result in fewer given the steep topography and any necessary right-of-way dedication, tree preservation, and drainage requirements. Staff recognizes that strictly single-family uses may not be the highest and most efficient use of the property at this location and may still negatively affect traffic flow along Futrall Drive. NS-G is a less intense zoning district than CS, and allows for minimal non-residential uses, and allows for up to 4-family dwellings by-right; larger multi-family structures (5 connected units or more) would require a conditional use permit approval. NS-G also allows for buildings up to 3 stories tall as opposed to the 5 stories permitted under CS. A future trail is planned along Futrall Drive that could eventually provide bike and pedestrian connectivity to and from this site and proposed developments closer to Wedington Drive, and existing developments closer to Martin Luther King Jr. Boulevard. A rezoning to NS-G could allow for non-residential uses that may be of use to nearby developments.

Land Use Plan Analysis: Staff finds that generally a request to upzone this property is not consistent with adopted land use policies, the Future Land Use Map designation, and goals of City Plan 2040. While there is not a stated neighborhood or comprehensive plan for this specific area, recent policy

decisions in the surrounding area indicate an intention for this area to remain zoned as-is; a previous rezoning request to CS was denied by the Planning Commission in 2022. To the east of the property, a Bill of Assurance was granted with a downzoning to R-A in 2018 to conserve the area with no allowable home construction associated with that rezoning. To the north, the City of Fayetteville acquired approximately 61 acres of land from the University of Arkansas for the preservation of the Markham Hill Woods. The site has a low infill score and is called out as a Residential Neighborhood Area, with the implication that any development at this location is intended to be primarily residential, rather than commercial uses. Staff finds that NS-G does get closer to meeting long-term land use plans for the area than CS, since it is still categorized as a primarily residential zone, with allowances for the insertion of smaller-scale non-residential uses.

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

Finding: A rezone from RSF-4 is justified, since a strictly single-family residential zoning district may not be the most appropriate zoning for the area with steep topography, large individual lot size requirements, and proximity to the interstate. NS-G is a reasonable request that opens up additional uses without being out of scale, reduces required lot sizes, and allows for more creative development opportunities such as cluster housing that may make better use of the property and its given constraints.

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

Finding: Rezoning the property from RSF-4 to NS-G does have the potential to increase traffic at this site, with most of the traffic pressure being circulated to Wedington Drive. S. Futrall is currently a one-way street and does not have direct access to the interstate. Under its current entitlement, the 6.62-acre property could be developed with a maximum density of 4 units per acre; NS-G zoning has a density maximum of 18 units per acre, though given necessary right-of-way dedication, drainage, tree preservation, and other requirements, the maximum is not likely to be met. Future connectivity to the east would also be nearly impossible at this point, given the undevelopable area immediately adjacent and steep terrain. The benefit of NS-G zoning, however, over RSF-4 zoning, is the potential for a mix of uses, which could potentially contribute to a decrease in need for auto-oriented trips, though without connectivity to surrounding areas, may still not be walkable to surrounding areas.

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 RSF-4 to NS-G would have the potential to alter the population density at this location and could potentially place an undesirable burden on public services. The property does not currently have direct access to water or sewer, so extensions to those services would be

required prior to any redevelopment of the site; those initial costs would be borne by the developer. Fayetteville Public Schools did not comment on the 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 approval of RZN-2024-0030.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>July 22, 2024</u>	☐ Tabled	☐ Forwarded	☒ Denied		
Motion: Cabe		Motion to forward failed for lack of majority.			
Second: McGetrick					
Vote: 4-4-0 (Commissioners Madden, Gulley, Werner, Garlock opposed)					

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre
 - §161.19 NS-G, Neighborhood Services - General
- Applicant Request Letter
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map

Additional Public Comment (added 7/23/2024)

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
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- (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. 6427, § 2, adopted April 20, 2021, "determines that this ordinance and all amendments to Code sections ordained or enacted by this ordinance shall automatically sunset, be repealed, terminated, and become void twenty (20) months after the passage and approval of this ordinance, unless prior to that date, the City Council amends this ordinance to repeal this sunset, repeal and termination section."

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.

(Ord. No. 5945, §7(Exh. A), 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)

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.

WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER (OF COUNSEL)
JENNIFER E. GRAY, P.A.*
ANDREW T. CURRY, P.A.
WILLIAM A. KELLSTROM
* ALSO LICENSED IN MISSOURI

WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

July 9, 2024

City of Fayetteville
Planning Department
125 W. Mountain Street
Fayetteville, AR 72701

RE: Rezoning Parcel No. 765-14601-000 from RSF-4, Residential Single-Family - Four Units Per Acres, to NS-G, Neighborhood Services, General

Dear Planning Staff:

My firm has been retained to represent the applicant, Winfred E. Watson Family Trust, with respect to this rezoning request. The applicant is requesting that Parcel No. 765-14601-000 (hereinafter "the Property"), be rezoned from RSF-4, Residential Single-Family - Four Units Per Acre, to NS-G, Neighborhood Services, General.

The proposed rezoning will not unreasonably or adversely conflict or affect the surrounding land uses. Currently, the property is bordered by RSF-4 and R-4 zonings to the North, East and South, and is bordered by Interstate 49 and N. Futrall Drive to the West. However, along the broader corridor of I-49 in this area, there are a large mix of zones, such as R-A, P-1, RSF-4, RMF-18, RMF-24, C-2, CS, UT.

Granted that this property is more or less adjacent to I-49, it is ripe for a higher intensity zoning, and in particular, one that allows for a mix of uses. This is exemplified by the fact that several properties along I-49 have already been zoned to CS or the similar UT, or to multi-family or commercial designations. The property is also adjacent to the East to the area frequently referred to as "Markham Hill." Notably, however, the topography of the property, the build-to and tree preservation requirements of CS, and the Hillside-Hilltop Overlay make it such that the any development on the property under a CS zoning would almost necessarily have to be shifted towards I-49, and leave a buffer of trees on the East side, which is adjacent to Markham Hill.

Lastly, this property should be rezoned because RSF-4 simply is not a proper zoning for this Property, for a variety of reasons. RSF-4 zoning allows, more or less, for exclusively single family homes, at a max density of four (4) units per acre. As mentioned earlier, the Property is adjacent to a busy interstate, and is not a desirable parcel for building single family homes, nor

would doing so be the best or most efficient use of the Property. The cost of site work and the density cap would make it such that any single family homes that were to be built on the site would have to be large, custom, and expensive, single family homes in order for an investor to recoup their up front costs. This type of product would not help to provide attainable housing, and would not be appropriate for a site so centrally located within the City. Accordingly, *any* zoning other than RSF-4 would be an improvement—and with the recent trends along this corridor of I-49, along with recent suggestions by Planning Staff, NS-G seems to be the most appropriate.

Thank you for considering this request for rezoning. If you have any questions, please contact me at 479-636-2168 or at wkellstrom@watkinslawoffice.com.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

/s/ Will A. Kellstrom

Will A. Kellstrom

WK:
pc:

Compiled Public Comment
RZN-2024-0030

From: Werner, Nick <nick.werner@fayetteville-ar.gov>
Sent: Monday, July 8, 2024 6:09 PM
To: Masters, Jessica <jmasters@fayetteville-ar.gov>
Subject: Fwd: RZN-2024-0030: Rezoning N Futrall, Between Wedington & MLK

Didn't realize you weren't already cc'ed on this until just now

From: Nick Thorn <nt@nickjthorn.com>
Sent: Monday, July 8, 2024 10:26:08 AM
To: Brink, Andrew <andrew.brink@fayetteville-ar.gov>; Payne, Brad <brad.payne@fayetteville-ar.gov>; Gulley, Fred <fred.gulley@fayetteville-ar.gov>; Garlock, Jimm <jimm.garlock@fayetteville-ar.gov>; Cabe, Matthew <matthew.cabe@fayetteville-ar.gov>; Madden, Mary <mary.madden@fayetteville-ar.gov>; McGetrick, Mary <mary.mcgetrick@fayetteville-ar.gov>; Castin, Nick <nick.castin@fayetteville-ar.gov>; Werner, Nick <nick.werner@fayetteville-ar.gov>
Subject: RZN-2024-0030: Rezoning N Futrall, Between Wedington & MLK

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.

Hello Planning Commission,

I am writing in opposition to the rezoning request for this property. I ask that the planning commission deny the rezoning request as recommended by staff.

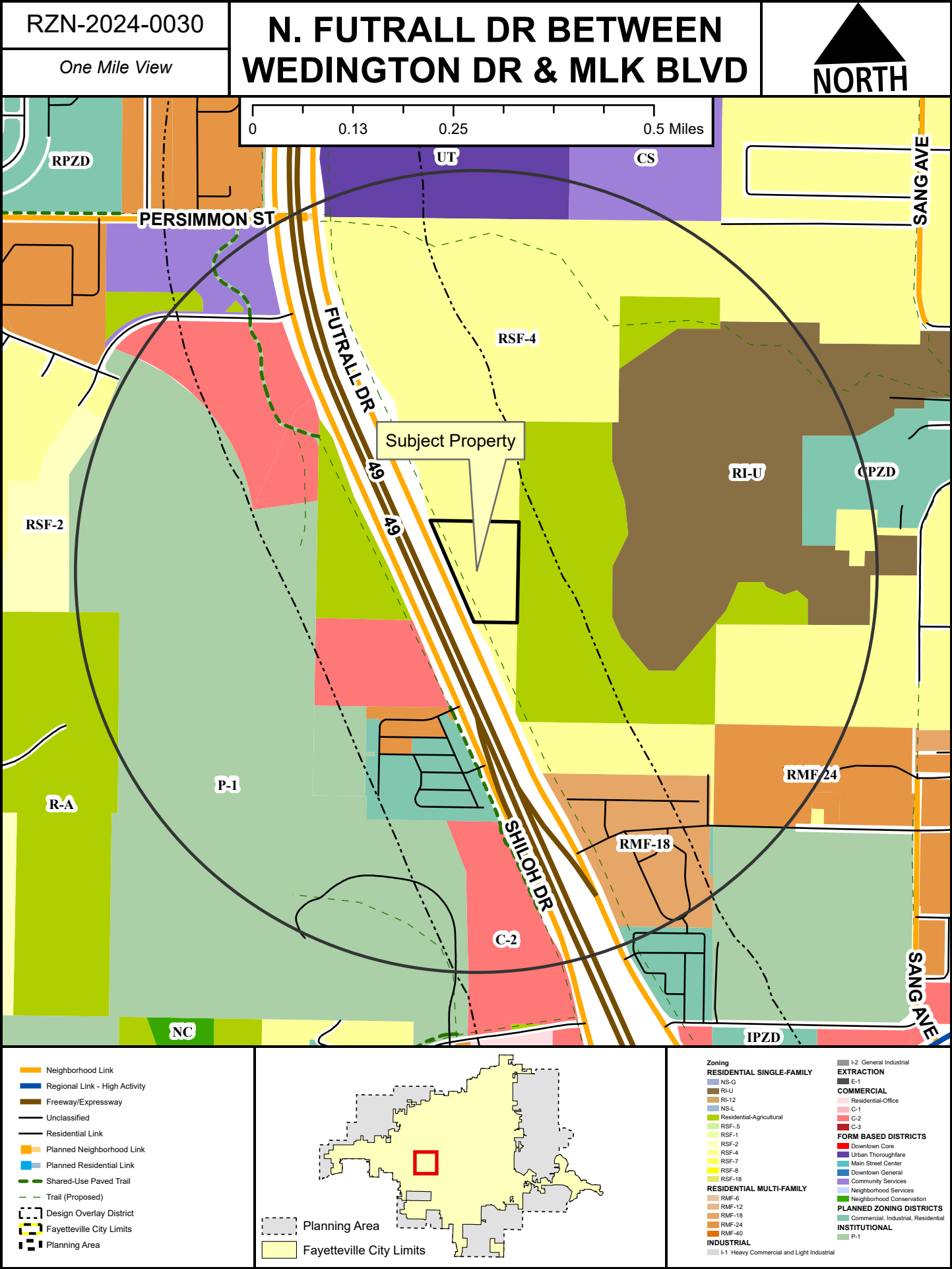
In addition to the reasons for denial given by staff, this is a highly-visible piece of forested land at the base of Markham Hill and the city must do everything in their power to maintain as much of this urban forest canopy as possible. Maintaining a mere 20% (as defined by the requested CS zoning district) of the existing 6.62 acres of tree canopy would result in the removal of more than 5 acres of mature forest. To meet the goals set forth in the adopted Climate Action Plan, we need to be preserving key portions of the city's tree canopy.

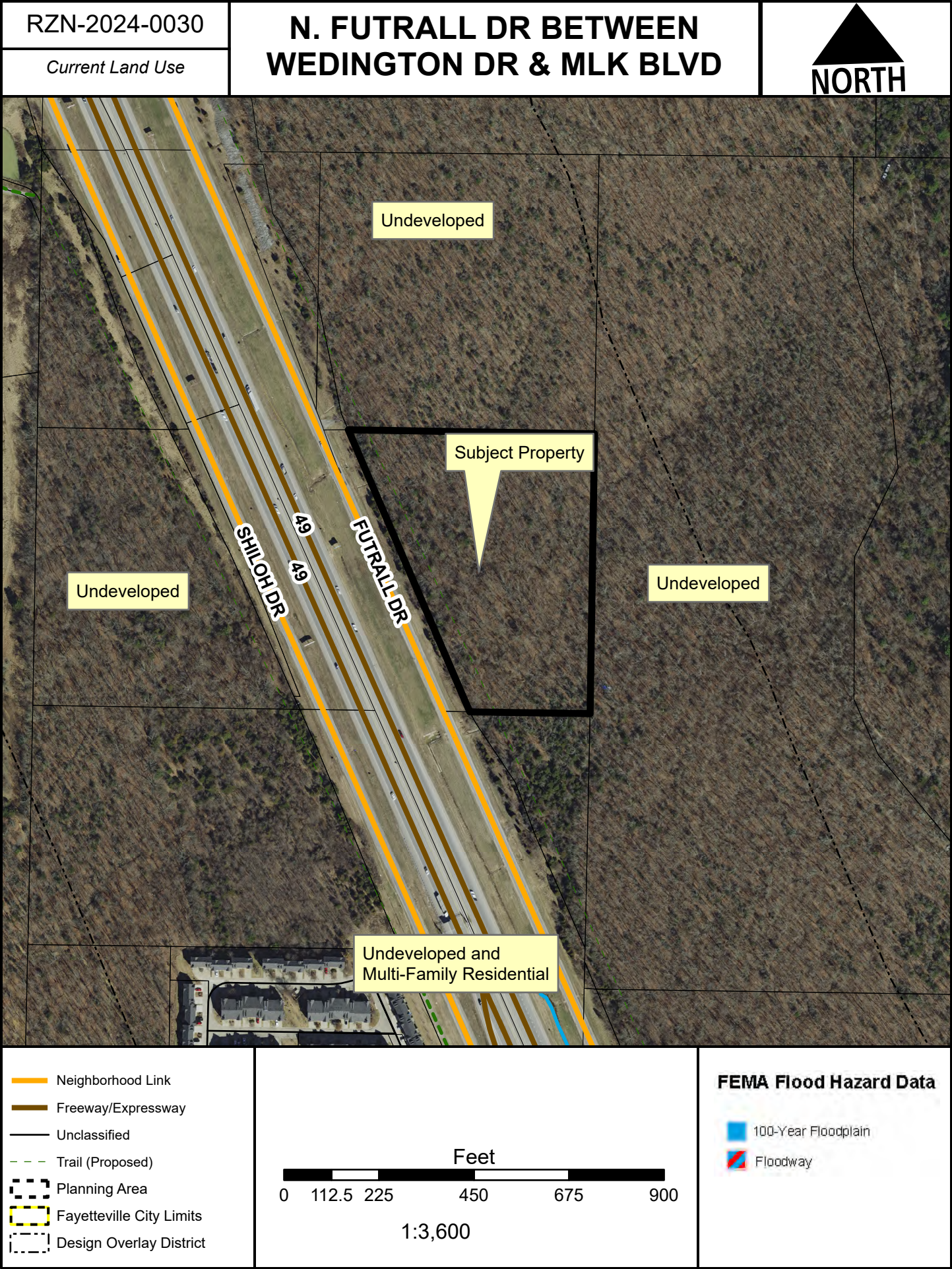
In closing, please deny this request.

Thank you for your service to our great city,

Nick Thorn

629 N Gray Avenue

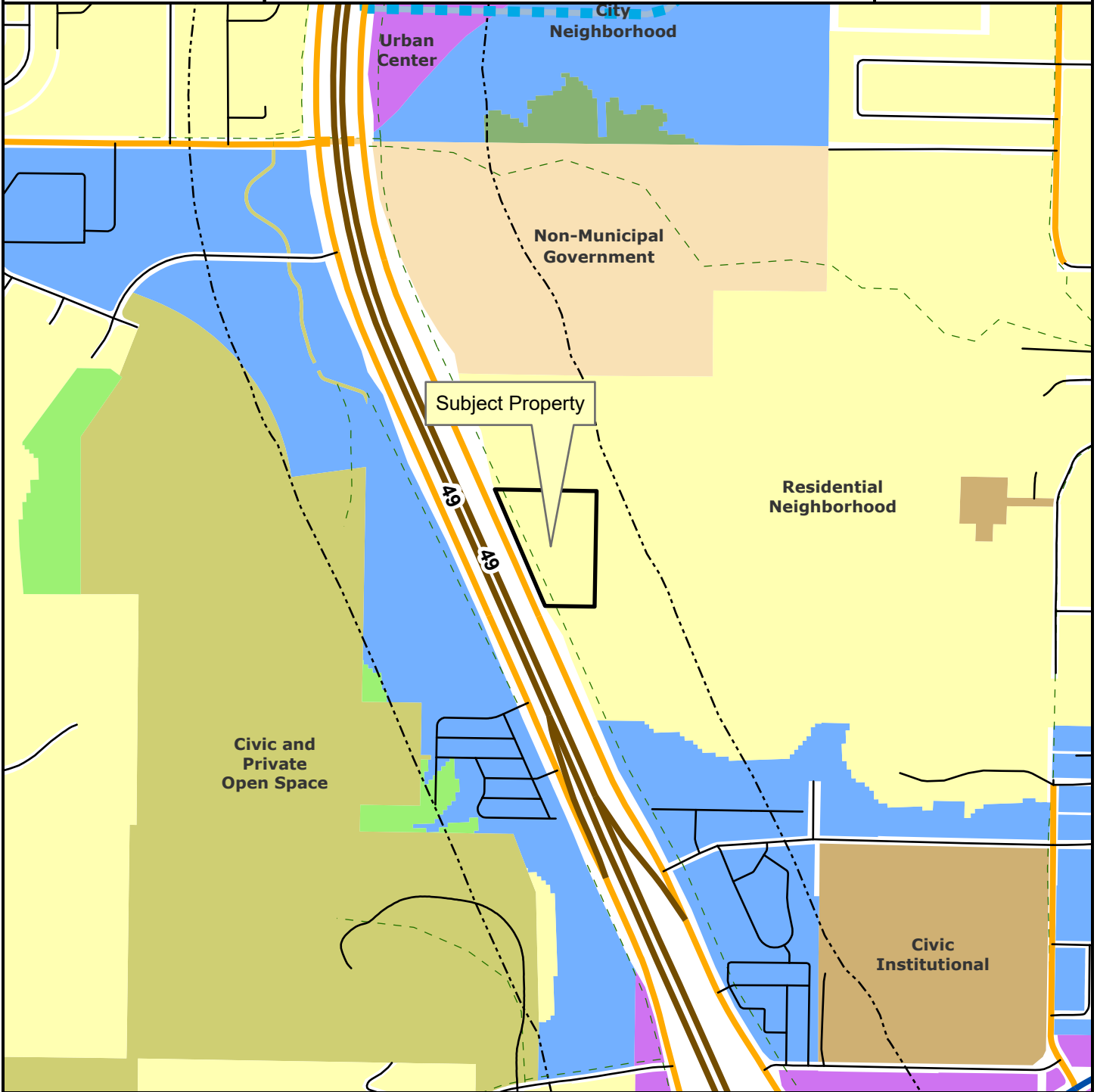




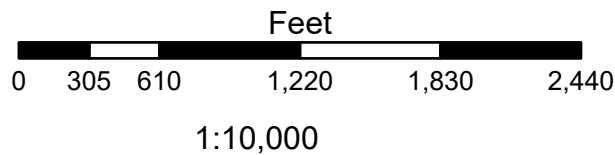
RZN-2024-0030

Future Land Use

N. FUTRALL DR BETWEEN WEDINGTON DR & MLK BLVD



- Neighborhood Link
- Regional Link - High Activity
- Freeway/Expressway
- Unclassified
- Residential Link
- Planned Neighborhood Link
- Planned Residential Link
- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Design Overlay District



- City Neighborhood
- Civic Institutional
- Civic and Private Open Space
- Industrial
- Natural
- Non-Municipal Government
- Residential Neighborhood
- Rural Residential
- Urban Center

Compiled Public Comment
RZN-2024-0030

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Subject: RZN-2024-0030: Rezoning N Futrall, Between Wedington & MLK

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.

Hello Planning Commission,

I am writing in opposition to the rezoning request for this property. I ask that the planning commission deny the rezoning request as recommended by staff.

In addition to the reasons for denial given by staff, this is a highly-visible piece of forested land at the base of Markham Hill and the city must do everything in their power to maintain as much of this urban forest canopy as possible. Maintaining a mere 20% (as defined by the requested CS zoning district) of the existing 6.62 acres of tree canopy would result in the removal of more than 5 acres of mature forest. To meet the goals set forth in the adopted Climate Action Plan, we need to be preserving key portions of the city's tree canopy.

In closing, please deny this request.

Thank you for your service to our great city,

Nick Thorn

629 N Gray Avenue

From: Lisa Orton <ortonlisam@gmail.com>
Sent: Monday, July 22, 2024 12:26 PM
To: Planning Shared <planning@fayetteville-ar.gov>
Cc: Lisa Orton <lisa_m_orton@yahoo.com>
Subject: Oppose upzoning of Watson property described in RZN-2024-0030

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.

Dear Planning Commission,

Please vote against the upzoning of the Watson property on the west side of Markham Hill (RZN-2024-0030).

The current zoning of RSF-4 is far better for Fayetteville in these wooded areas than upzoning to CS or NS-G or any other upzoning category. Especially with our newly approved Climate Action Plan.

I agree with all of the concerns against the upzoning identified in the City Staff report.

Other reasons for maintaining the current RSF-4 zoning:

1. The property owner can still develop under the current zoning of RSF-4.
2. The City is not required to rezone a property just because a property owner or developer requests it.
3. The lower density RSF-4 allows for preserving more tree cover, helping purify Fayetteville's air and water.
4. The lower density RSF-4 causes fewer drainage and flooding problems for surrounding and lower elevation properties. Flooding and drainage have been a real problem in general in Fayetteville from our excessive, higher-density development and lack of adequate ordinances protecting existing residents. Adding more and more impervious surfaces has contributed to Fayetteville's storm management problems. Upzoning these parcels will only add to these problems, especially since they are on or adjacent to Hillside/Hilltop land.
5. These parcels have clay soil which contributes even more to drainage and flooding problems.
6. There are natural springs on Markham Hill. Blocking or disturbing these adds to drainage/flooding problems and messes with nature's way of handling water.
7. RSF-4 is a better transition from a nature preserve to higher density. It does not make sense to have higher density buildings (with their people, noise, traffic, and lights) next to wildlife and nature preserves (50-acre conservation easement on the east and the City's Markham Hill Woods on the north).
8. The historic wooded areas remaining on Markham Hill (not deforested yet) are worth protecting in Fayetteville.
9. There is already too much traffic on Martin Luther King Blvd, the Futrall access road, and surrounding areas. Lower density RSF-4 development will cause fewer additional problems than a higher density zoning.

Please oppose the upzoning.

Sincerely,

Compiled Public Comment
RZN-2024-0030

Lisa Orton
1663 W Halsell Rd
Fayetteville, AR 72701
410-674-8440
Ward 4

From: CityClerk <cityclerk@fayetteville-ar.gov>
Sent: Monday, July 22, 2024 1:17 PM
To: Planning Shared <planning@fayetteville-ar.gov>
Cc: Curth, Jonathan <jcurth@fayetteville-ar.gov>; Masters, Jessica <jmasters@fayetteville-ar.gov>;
Marquette Bruce <marquette44@gmail.com>
Subject: RE: Oppose upzoning of Watson property described in RZN-2024-0030

Good afternoon,

I believe this public comment was meant for the Planning Department; it is regarding item 4 on tonight's Planning Agenda (under Unfinished Business).

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



Compiled Public Comment
RZN-2024-0030

From: Marquette Bruce <marquette44@gmail.com>
Sent: Monday, July 22, 2024 12:34 PM
To: CityClerk <cityclerk@fayetteville-ar.gov>
Subject: Fwd: Oppose upzoning of Watson property described in RZN-2024-0030

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.

Adding my name to this! Thank you,

Marquette Bruce

741 North Lewis Ave.

I live in this horrific change for the worse.

Sent from my iPhone

Begin forwarded message:

From: Lisa Orton <ortonlisam@gmail.com>
Date: July 22, 2024 at 12:26:21 PM CDT
To: planning@fayetteville-ar.gov
Cc: Lisa Orton <lisa_m_orton@yahoo.com>
Subject: Oppose upzoning of Watson property described in RZN-2024-0030

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Please oppose the upzoning.

Compiled Public Comment
RZN-2024-0030

Sincerely,

Lisa Orton

1663 W Halsell Rd

Fayetteville, AR 72701

410-674-8440

Ward 4