



**Revised Agenda:
Adding Items 17, 18 & 19.**

BENTONVILLE CITY COUNCIL AGENDA

**Committee of the Whole
Community Development
Planning Commission Meeting Room**

**Tuesday, July 22, 2014 6:00 p.m.
305 SW "A" Street**

**Regular City Council Meeting
Community Development
Planning Commission Meeting Room**

**Tuesday, July 22, 2014 6:00 p.m.
305 SW "A" Street**

**Pledge of Allegiance
Moment of Silence – For our Military Forces
Roll Call
Approval of Minutes: July 8, 2014**

AGENDA

1. Request that the City Council adopt a resolution to recognize, commend and congratulate Lieutenant David Green upon his July 31, 2014 retirement. This resolution recognizes 28 years of dedicated service to the Bentonville Police Department. More than 20 of these years of service were devoted to ensuring quality policing to the citizens of Bentonville as a Uniform Division Watch Commander. This resolution also wishes Lieutenant Green continued health, happiness, and continued success in all of his future endeavors. See attached.
(Pages 4-5)
2. Planning:
 - 2a. **Alan Cole: Property Line Adjustment, Lots 2, Sunshine School Subdivision, 2201 Southeast Moberly Lane, Zoned C-2 General Commercial & R-O, Residential Office.**
(Pages 7-10)
The planning commission voted 5-0-1 abstain recommending approval.

The applicant has submitted a property line adjustment to create one new lot from two existing lots to be known as Lot 2 (9.91 acres) of the Sunshine School Subdivision. The plat also indicates the dedication of a 20 feet utility easement along Southeast Moberly Lane.
 - 2b. **Alan Cole: Rezoning, Ozark Guidance Center Foundation, Southeast Corner of Southeast 20th Street and Southeast Moberly Lane.**
(Pages 11-16)
The planning commission voted 5-0-1 abstain recommending approval.

The applicants have requested a rezoning from R-O, Residential Office to C-2, General Commercial, in order to develop the property as a car dealership.

2c. **SJCSJ Properties of NWA, LLC: Property Line Adjustment, Lot 1, Woodlands at Creekside, Northwest 'A' Street, Zoned R-3.**

(Pages 17-20)

The planning commission voted 6-0 recommending approval.

The applicant has submitted a Property Line Adjustment application for property located along Northwest 'A' Street, immediately south of the city's compost facility. The proposed plat as provided indicates the creation of one lot to be known as Lot 1 (4.73 acres) of Woodlands at Creekside subdivision. The plat also specifies the dedication of an additional 35 feet of right-of-way along Northwest 'A' Street as well as the dedication of a utility drainage and access easement.

3. Approval of the placement of a piece of artwork, titled NuPenny's Last Stand by Randy Regier, as part of the Crystal Bridges Museum of American Art upcoming exhibition State of the Art: Discovering American Art Now in the alley on the eastside of Main Street, between Central Avenue and Southwest 2nd Street. The Public Arts Advisory Committee recommended the proposal by a vote of 3 – 0.
(Pages 21-32)
4. An ordinance vacating a street right of way located adjacent and south of Lot 37 Allencroft Addition to the City of Bentonville, Arkansas, Benton County, Arkansas.
(Pages 33-36)
5. A resolution setting a public hearing for a utility easement vacation request located at Lot 105 Phase 4, Wildwood Subdivision.
(Pages 37-39)
6. A resolution setting a public hearing for a utility easement vacation request by Kevin Sedlacek located in parts of Lots 8 and 9 of Woods Creek South.
(Pages 40-42)
7. A resolution setting a public hearing for a utility easement vacation request by Rafael Colberg located in Lot 16 of the Bluffs.
(Pages 43-45)
8. A resolution setting a public hearing for a utility easement vacation request by Alan Cole located in Lot 1, Sunshine School Subdivision.
(Pages 46-48)
9. Approval of Bentonville City Council to award Bid #14-38 to General Construction Solutions for the construction of sidewalks along SE "C" Street, both north and south of the intersection of SE 22nd Street and SE "C" Street. The contract amount for this project is \$44,444.00 with a 10% contingency of \$4,444.40 brings the total project amount to \$48,888.40.
(Pages 49-51)
10. City Council to approve a budget adjustment of \$48,888.40 to be used for SE "C" Street Sidewalk Improvement.
(Pages 52-54)
11. The Parks and Recreation Staff are seeking City Council's approval of a bid award for bid #14-36 in the amount of \$68,985.68 for the construction of the pathways of the Legacy Orchards at Orchards Park.
(Pages 55-58)

12. An ordinance authorizing the Mayor and City Council to enter into an agreement with Modern Fence & Supply Company for repair/replacement of 7 different gates located at the City of Bentonville Inventory Warehouse and the Electric Department for an amount not to exceed \$36,990.00. **(Pages 59-64)**
13. Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a real estate contract with Affordable Arkansas Homes, LLC for the sale of property referenced as City Maintenance Facilities (9.89 acres on SE 3rd Street), Head Start Facility (1.5 acres at 802 NW A Street), Lots 1, 2 and 3 of Price Coffee Addition (142 acres) and 9.5 acres on southern end of Tiger Tank (parcel no. 18-09863-001) for the sum of \$7,000,000.00 plus seller associated closing costs. See attached memo, budget adjustment form and real estate contract. **(Pages 65-90)**
14. Council approval of a resolution authorizing the Mayor and City Clerk to enter into a lease agreement with Affordable Arkansas Homes, LLC for the lease of City Maintenance Facilities Campus (9.89 acres on SE 3rd Street). See attached memo and lease agreement. **(Pages 91-105)**
15. Council approval of a budget adjustment recognizing \$7,000,000.00 received from the sale of City Facilities and purchase of Rose Property for \$5,200,000.00 to relocate City Maintenance/Utility Facilities. **(Pages 106-109)**
16. Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a real estate contract with Rose Properties, LLC for the purchase of property referenced as 19 acres of reserved property of the Keeling Subdivision (parcel no. 01-08931-000) and 18 acres of unplatted property (parcel no. 01-00128-000) located at 501 SW Airport Road containing a total of 37 acres, more or less, for the sum of \$5,200,000.00 plus buyer associated closing costs. See attached memo, budget adjustment form and real estate contract. **(Pages 110-127)**
17. Approval for Mayor and City Clerk to enter into a Development Agreement with Cornerstone Aviation, LLC for the construction of public improvements to support a new 7 bay T hangar on the west side of Bentonville Municipal Airport. **(Pages 128-136)**
18. Council approval for the Mayor and City Clerk to enter into a contract with Don Peters Construction for public improvements in support of a new 7 bay T hangar at Bentonville Municipal Airport. The City has received a grant from Arkansas State Department of Aeronautics for \$247,126.76 (80%) of the project. The remaining cost will be paid by the hangar owner, Cornerstone, LLC. **(Pages 137-149)**
19. Approval for Mayor and City Clerk to enter into a Ground Lease with Cornerstone Aviation, LLC for a 7 bay T hangar on the west side of Bentonville Municipal Airport. **(Pages 150-160)**



CHECK ALL THAT APPLY	
	Bid Award
	Budget Adjustment
	Change Order
	Informational
	Ordinance
x	Resolution
	Other

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by:

Jon Simpson

Department

Police

Phone

271-3172

ACTION REQUIRED:

Request that the City Council adopt a resolution to recognize, commend and congratulate Lieutenant David Green upon his July 31, 2014 retirement. This resolution recognizes 28 years of dedicated service to the Bentonville Police Department. More than 20 of these years of service were devoted to ensuring quality policing to the citizens of Bentonville as a Uniform Division Watch Commander. This resolution also wishes Lieutenant Green continued health, happiness, and continued success in all of his future endeavors. See attached.

COST TO CITY:

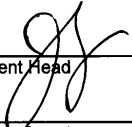
Cost of this Request: None

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head  Date 7-8-14

Purchasing Agent _____ Date _____

Finance Director  Date 7-11-14

CT Staff Attorney Date 7/11/14

BOM Mayor Date 7/16/14

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE





WHEREAS, LIEUTENANT DAVID W. GREEN BEGAN HIS 30-PLUS YEAR ARKANSAS LAW ENFORCEMENT CAREER IN APRIL 1983 IN BENTONVILLE, ARKANSAS AS A RESERVE DEPUTY FOR THE BENTON COUNTY SHERIFF'S OFFICE; AND

WHEREAS, LIEUTENANT DAVID W. GREEN JOINED THE BENTONVILLE POLICE DEPARTMENT AS A PATROLMAN ON JULY 17, 1986, RISING THROUGH THE RANKS OF THE DEPARTMENT AND BEING NAMED WATCH COMMANDER ON MARCH 29, 1994, WHERE HE FAITHFULLY SERVED, WITH THE PRESENT RANK OF POLICE LIEUTENANT, UNTIL HIS RETIREMENT; AND

WHEREAS, LIEUTENANT DAVID W. GREEN WAS THE FIRST OFFICER IN THE HISTORY OF THE BENTONVILLE POLICE DEPARTMENT TO BE PROMOTED DIRECTLY FROM PATROLMAN TO WATCH COMMANDER, WAS ONE OF THE FIRST SNIPERS FOR THE DEPARTMENT, AND WAS THE FIRST TO BEGIN AND END HIS PROFESSIONAL LAW ENFORCEMENT CAREER AT THE BENTONVILLE POLICE DEPARTMENT, WITH THE LONGEST TENURE IN THE HISTORY OF THE DEPARTMENT AT TWENTY-EIGHT YEARS OF CONTINUOUS AND DEDICATED SERVICE; AND

WHEREAS, LIEUTENANT DAVID W. GREEN, IN HIS CAPACITY OF WATCH COMMANDER, PROVIDED TRAINING, GUIDANCE, COUNSELING, SOUND ADVICE, EXPERT KNOWLEDGE, AND ENHANCED OFFICER SAFETY SKILLS TO THE NUMEROUS OFFICERS HE TRAINED, SUPERVISED, AND SUPPORTED EACH DAY, INCLUDING DAYTIME, EVENING, NIGHTTIME, WEEKENDS, AND HOLIDAYS WITH MORE THAN THREE DECADES OF LAW ENFORCEMENT SERVICE; AND

WHEREAS, LIEUTENANT DAVID W. GREEN INVESTED HIMSELF IN EXPANDING HIS LAW ENFORCEMENT EXPERTISE BY ATTENDING COUNTLESS TRAINING DATES AND RECEIVING NUMEROUS CERTIFICATES AND CERTIFICATIONS, INCLUDING THE HIGHEST CERTIFICATION AWARDED TO ARKANSAS LAW ENFORCEMENT OFFICERS, THE SENIOR INSTRUCTOR CERTIFICATE, AWARDED ON MAY 26, 2008; AND

WHEREAS, LIEUTENANT DAVID W. GREEN ALSO DEVELOPED SEVERAL PROGRAMS FOR THE CITIZENS OF BENTONVILLE, SUCH AS NEIGHBORHOOD WATCH AND RISK ASSESSMENT PROGRAMS FOR NUMEROUS RESIDENTS, BANKS, AND BUSINESSES, ALL OF WHICH HELPED TO PROVIDE NEW LEVELS OF SAFETY AND SECURITY FOR THE COMMUNITY; AND

WHEREAS, LIEUTENANT DAVID W. GREEN HAS BEEN COMMENDED FOR HIS "OUTSTANDING TEAM WORK, ATTENTION TO DETAIL, RESOURCEFULNESS, AND EXCELLENT INVESTIGATIVE TECHNIQUES", RESULTING IN NUMEROUS ARRESTS AND CONVICTIONS AND IMMEASURABLE LEVELS OF CRIME PREVENTION; AND

WHEREAS, LIEUTENANT DAVID W. GREEN, THROUGH HIS COUNTLESS ACTIVITIES AND ACCOMPLISHMENTS, DELIVERED TO THE BENTONVILLE POLICE DEPARTMENT AND THE CITIZENS OF BENTONVILLE AN UNPARALLELED LEVEL OF PROFESSIONALISM AND SERVICE.

NOW THEREFORE, BE IT RESOLVED THAT BY THE ADOPTION OF THIS RESOLUTION, THE CITY COUNCIL OF BENTONVILLE HEREBY COMMENDS AND CONGRATULATES LIEUTENANT DAVID W. GREEN FOR HIS MANY "FIRSTS" AND HIS 28 YEARS OF DEDICATED SERVICE TO THE BENTONVILLE POLICE DEPARTMENT AND THE CITIZENS OF BENTONVILLE, AND WISHES HIM HEALTH, HAPPINESS, AND CONTINUED SUCCESS IN ALL HIS FUTURE ENDEAVORS.

GIVEN THIS 22nd day of July, 2014, in Bentonville, in the Great State of Arkansas, in the United States of America.

Bob McCaslin, Mayor

Linda Spence, City Clerk

**City Council
Planning
July 22, 2014**

Alan Cole: Property Line Adjustment, Lots 2, Sunshine School Subdivision, 2201 Southeast Moberly Lane, Zoned C-2 General Commercial & R-O, Residential Office.

The planning commission voted 5-0-1 abstain recommending approval.

The applicant has submitted a property line adjustment to create one new lot from two existing lots to be known as Lot 2 (9.91 acres) of the Sunshine School Subdivision. The plat also indicates the dedication of a 20 feet utility easement along Southeast Moberly Lane.

Alan Cole: Rezoning, Ozark Guidance Center Foundation, Southeast Corner of Southeast 20th Street and Southeast Moberly Lane.

The planning commission voted 5-0-1 abstain recommending approval.

The applicants have requested a rezoning from R-O, Residential Office to C-2, General Commercial, in order to develop the property as a car dealership.

Planning Commission Staff Report
Property Line Adjustment: Lots 2, Sunshine School Subdivision

TO: Bentonville Planning Commission Members
THRU: Troy Galloway, AICP, Community Development Director
FROM: Jon Stanley, Planner
PC DATE: July 15, 2014

GENERAL INFORMATION:

H.T.E. Project Number: 14-07000022

Applicant/Current Owner: Alan Cole

Representative: Vernon Williams, P.E.

Requested Action: Property Line Adjustment Approval

Location: 2201 Southeast Moberly Lane

Existing Zoning: C-2, General Commercial & R-0, Residential Office

Land Use Plan: Commercial

BACKGROUND:

The applicant has submitted a property line adjustment to create one new lot from two existing lots to be known as Lot 2 (9.91 acres) of the Sunshine School Subdivision. The plat also indicates the dedication of a 20 feet utility easement along Southeast Moberly Lane.

SURROUNDING LAND USES AND ZONING:

Direction	Zoning	Land Use
North	R-4, High Density Residential	High Density Residential
South	C-2, General Commercial	Commercial
East	None (Interstate-49)	None (Interstate-49)
West	R-3, Medium Density Residential & Office	High Density Residential & Office

STREETS

Direction	Name	Classification
North	-	-
South	-	-
East	Interstate 49	Expressway
West	Southeast Moberly Lane	Arterial

TRAFFIC FINDINGS

- (a) Traffic data for the nearest intersections are as follows: N/A.
- (b) Traffic summary software predicts the additional traffic for this project is: N/A.

STANDARD CONDITIONS OF APPROVAL

1. A digital copy of the plat.
2. All technical review comments must be addressed before building permits will be issued.

ISSUES / ANALYSIS:

Site Inspection: A site inspection was completed; this property is vacant within a commercial area.

Drainage Report: A drainage report is not required for this property line adjustment.

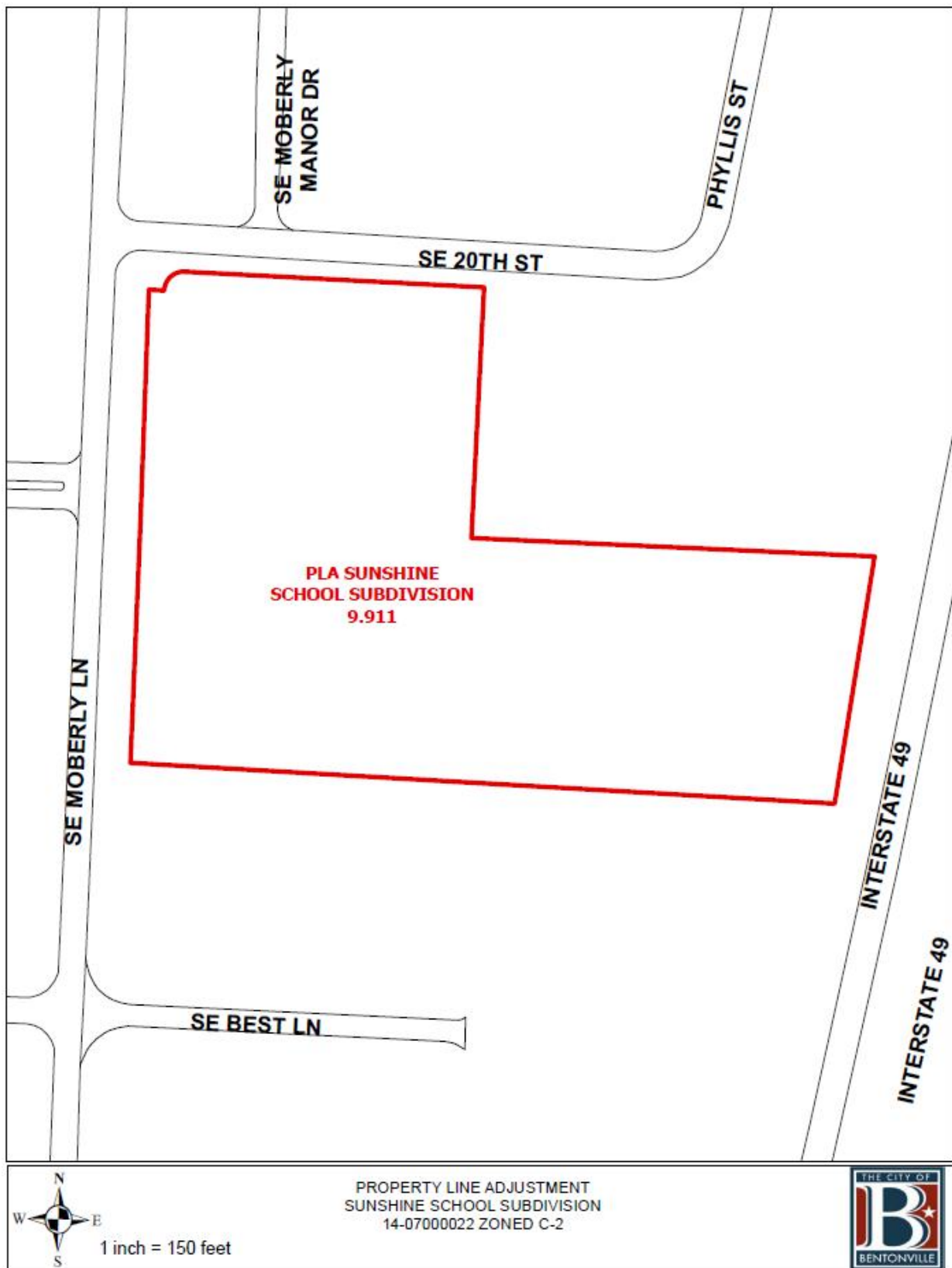
Water / Sewer: Per the G.I.S. site, water and sewer are available at this location.

Waiver(s): N/A

Analysis / Conclusion: This property line adjustment **DOES** meet the minimum requirements of the subdivision regulations.

RECOMMENDATION:

Staff has reviewed this application and recommends **APPROVAL**.



ORDINANCE NO. _____

AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOT 2, SUNSHINE SCHOOL SUBDIVISION TO THE CITY OF BENTONVILLE, ARKANSAS.

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lot 2, Sunshine School Subdivision, to the City of Bentonville, Benton County Arkansas, was submitted to the Bentonville Planning Commission on the 15th day of July, 2014 and

WHEREAS, said property line adjustment is attached hereto as Exhibit "A" and

WHEREAS, the Bentonville Planning Commission considered said property line adjustment on the date stated and at other times, and voted to recommend the approval of said property line adjustment to the City Council; and

WHEREAS, the property line adjustment of real property as described herein has been submitted to the City Council of the City of Bentonville, and after consideration and deliberation said Council is of the opinion that said property line adjustment should be approved.

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

Section 1: That the property line adjustment of Lot 2, Sunshine School Subdivision, to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said property line adjustment by certifying said acceptance on the approved property line adjustment.

PASSED AND APPROVED THIS _____ DAY OF _____, 2014

ATTEST

APPROVED

CITY CLERK

MAYOR



PC Meeting of: July 15, 2014

The City of Bentonville, Arkansas

305 S.W. "A" Street
Bentonville, AR 72212
Telephone: (479) 271-3126
Fax: (479) 271-5906

**REZONING: Ozark Guidance Center Foundation,
R-O, Residential Office to C-2, General Commercial
Current Planning Division Correspondence: Planning Commission Staff Report**

TO: City of Bentonville, Arkansas Planning Commission
FROM: Jon Stanley, Planner
THRU: Troy Galloway, AICP, Community Development Director
DATE: July 15, 2014

GENERAL INFORMATION

H.T.E. Project Number: 14-09000017

Applicant/Current Owner: Alan Cole

Representative: Vernon Williams, P.E.

Requested Action: Rezoning

Location: Southeast Corner of Southeast 20th Street and Southeast Moberly Lane

Existing Zoning: R-0, Residential Office

Proposed Zoning: C-2, General Commercial

Future Land Use Map Designation: Commercial

BACKGROUND / HISTORY

Property Description/Site Inspection: A site inspection was completed; this property is vacant within a commercial area.

Previous Rezoning Requests for this Property: There are no known rezoning requests for this property.

Surrounding Land Uses & Zonings:

Direction	Current Land Use	Existing Zoning	Future Land Use Map Designation
North	Multifamily Apartments	R-4, High Density Residential	High Density Residential
South	Commercial	C-2, General Commercial	Commercial
East	Interstate 49	None	Interstate 49
West	Multifamily Apartments	R-3, Medium Density Residential	High Density Residential & Office

Surrounding Streets & Classifications:

Direction	Name	Master Street Plan Classification	Current Condition
North	-	-	-
South	-	-	-
East	Interstate 49	Expressway	4 lane divided interstate
West	Southeast Moberly Lane	Arterial	2 lane asphalt with center turn lane and curb and gutter

LEGAL NOTIFICATIONS

Public Notice: On **June 4, 2014**, the property owner and/or representative mailed certified public notices to property owners within a 200 foot radius of the subject site and staff published a legal notice in the Arkansas Democrat-Gazette, Northwest Arkansas Addition on **June 20, 2014**. In addition, staff posted a notice of public hearing sign on the property on **June 30, 2014**. This **DOES** meet legal noticing requirements and are adequate for the scope of this rezoning application.

RELATIONSHIP TO THE GENERAL PLAN AND FUTURE LAND USE MAP

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(s) of Staff: The future land use plan depicts this property as Commercial. Southeast Moberly Lane is a major arterial street and the subject property is bordered to the east by the I-540 corridor. The proposed zoning designation would allow for future redevelopment along a corridor that is established with many existing commercial businesses.

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

Finding(s) of Staff: The proposed zoning does have the potential to cause an adverse effect on current traffic danger and congestion. The impact on traffic conditions will be assessed at the time of development and improvements will be provided as needed to alleviate concerns.

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

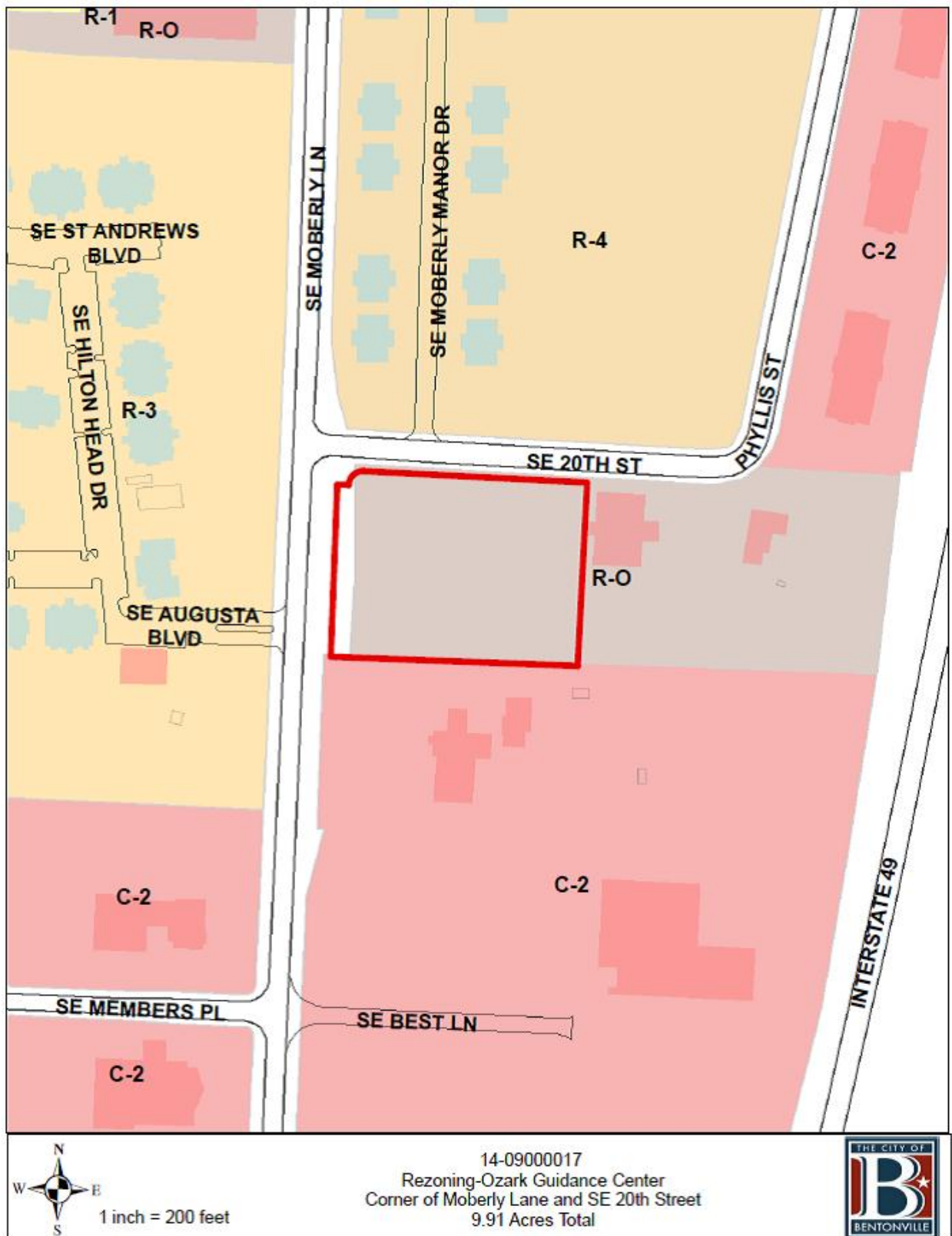
Finding(s) of Staff: Water and sewer are available at this location. Pressure and capacity is adequate for the scope of the project.

ANALYSIS, CONCLUSION, & SUMMARY

The rezoning request is consistent with the City of Bentonville's Future Land Use Map, which depicts this property as Commercial.

STAFF RECOMMENDATION

Staff has reviewed this application and based on the findings presented in this staff report, staff recommends **APPROVAL** of this rezoning from R-O, Residential Office to C-2, General Commercial.



RE-ZONING NARRATIVE
SW Corner of 20th Street and Moberly Lane

The property is located at the southwest intersection of Moberly Lane and 20th Street. It is currently zoned R-0, Residential Office. The property is currently owned by Ozark Guidance Center and is vacant.

The property is currently under contract to be sold to Collier International, who wishes to have the property re-zoned to C-2, General Commercial. The new owner wishes to do this, so it can be developed as a car dealership.

This property will be re-platted as one lot with the property directly south of it. That property was recently re-zoned C-2. The proposed zoning is consistent with the development south of the new combined tract, which currently consists of three car dealerships - all zoned C-2. The property east of this property is currently zoned R-0, Residential Office, and owned by Ozark Guidance Center – the entity selling this property. The property north of Ozark Guidance Center is zoned C-2. The property north and west of this property are zoned R-4 and currently have apartments constructed on them.

The City of Bentonville's Zoning Ordinance defines C-2 zoning as:

The C-2 District represents the least restrictive of the commercial districts and is designed to serve the planning area and highway travelers. This district shall congregate on local arterial streets in such a manner as to minimize disruptions of through traffic and shall be interspersed within the corporate boundaries.

The C-2 zoning appears to be appropriate for this property as it is bordered on the east by Interstate 540 and on the west by SE Moberly Lane, a local arterial street. The C-2 zoning also appears to be consistent with surrounding zoning of other properties. The proposed owner will be required to bring the property's development plans to the City of Bentonville for approval. The properties use, traffic, signage, appearance, and utility modifications can be taken up at that time, but the property owner anticipates complying with all City of Bentonville requirements for C-2 zoned properties. The property has access to all city utilities.

ORDINANCE NO. _____

AN ORDINANCE CHANGING REAL ESTATE IN THE CITY OF BENTONVILLE, ARKANSAS, FROM ITS PRESENT CLASSIFICATION TO C-2, GENERAL COMMERCIAL.

WHEREAS, Alan Cole duly filed a petition with the City Planning Commission requesting that the hereinafter described real property situated in Benton County, Arkansas, be changed from its present classification to C-2, General Commercial property to be used in accordance with city zoning laws and state laws; which property is described as follows:

TRACT A OF THE FINAL PLAT OF OZARK GUIDANCE CENTER SUBDIVISION, CITY OF BENTONVILLE, ARKANSAS AS PER THE RECORDED PLAT FILED FOR RECORD IN PLAT BOOK "P4" AT PAGE 438, BENTON COUNTY, ARKANSAS.

WHEREAS, the City Planning Commission duly met and considered the application and duly set the petition for public hearing to be held the 15th day of July 2014 in the Council Room of the City of Bentonville; notice of said hearing having been published in the Benton County Daily Record for the time and in the manner required by law; and

WHEREAS, the City Planning Commission voted to recommend to the City Council that the petition be approved and that said property be rezoned from its present classification to C-2, property;

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

Section 1: That the above described real property is hereby changed from its present classification to C-2 property to be used in accordance with the City zoning laws of the State of Arkansas.

PASSED AND APPROVED this _____ day of _____, 2014

ATTEST

APPROVED

CLERK

MAYOR

Planning Commission Staff Report
Property Line Adjustment: Lots 1, Woodlands at Creekside

TO: Bentonville Planning Commission Members
THRU: Troy Galloway, AICP, Community Development Director
FROM: Jon Stanley, Planner
PC DATE: July 15, 2014

GENERAL INFORMATION:

Project Number: 14-04000001

Owner: SJCSJ Properties of NWA, LLC

Applicant/Representative: Morrison Shipley Engineers, Inc. (Sammi May)

Engineer/Surveyor: Morrison Shipley Engineers, Inc.

Requested Action: Property Line Adjustment

Location: Northwest 'A' Street (South of city compost facility)

Existing Zoning: R-3, Medium Density Residential

Land Use Plan: Low Density Residential

BACKGROUND:

The applicant has submitted a Property Line Adjustment application for property located along Northwest 'A' Street, immediately south of the city's compost facility. The proposed plat as provided indicates the creation of one lot to be known as Lot 1 (4.73 acres) of Woodlands at Creekside subdivision. The plat also specifies the dedication of an additional 35 feet of right-of-way along Northwest 'A' Street as well as the dedication of a utility drainage and access easement.

SURROUNDING LAND USES AND ZONING:

Direction	Zoning	Land Use
North	A-1, Agricultural	Public
South	R-3, Medium Density Residential	Low Density Residential
East	A-1, Agricultural	Public
West	A-1, Agricultural & R-1, Single Family Residential	Low Density Residential

STREETS

Direction	Name	Classification
North	-	-
South	-	-
East	-	-
West	Northwest 'A' Street	Collector

STANDARD CONDITIONS OF APPROVAL

1. A digital copy of the plat.
2. All technical review comments must be addressed before building permits will be issued.

ISSUES / ANALYSIS:

Site Inspection: A site inspection was completed; this site is vacant within a residential area.

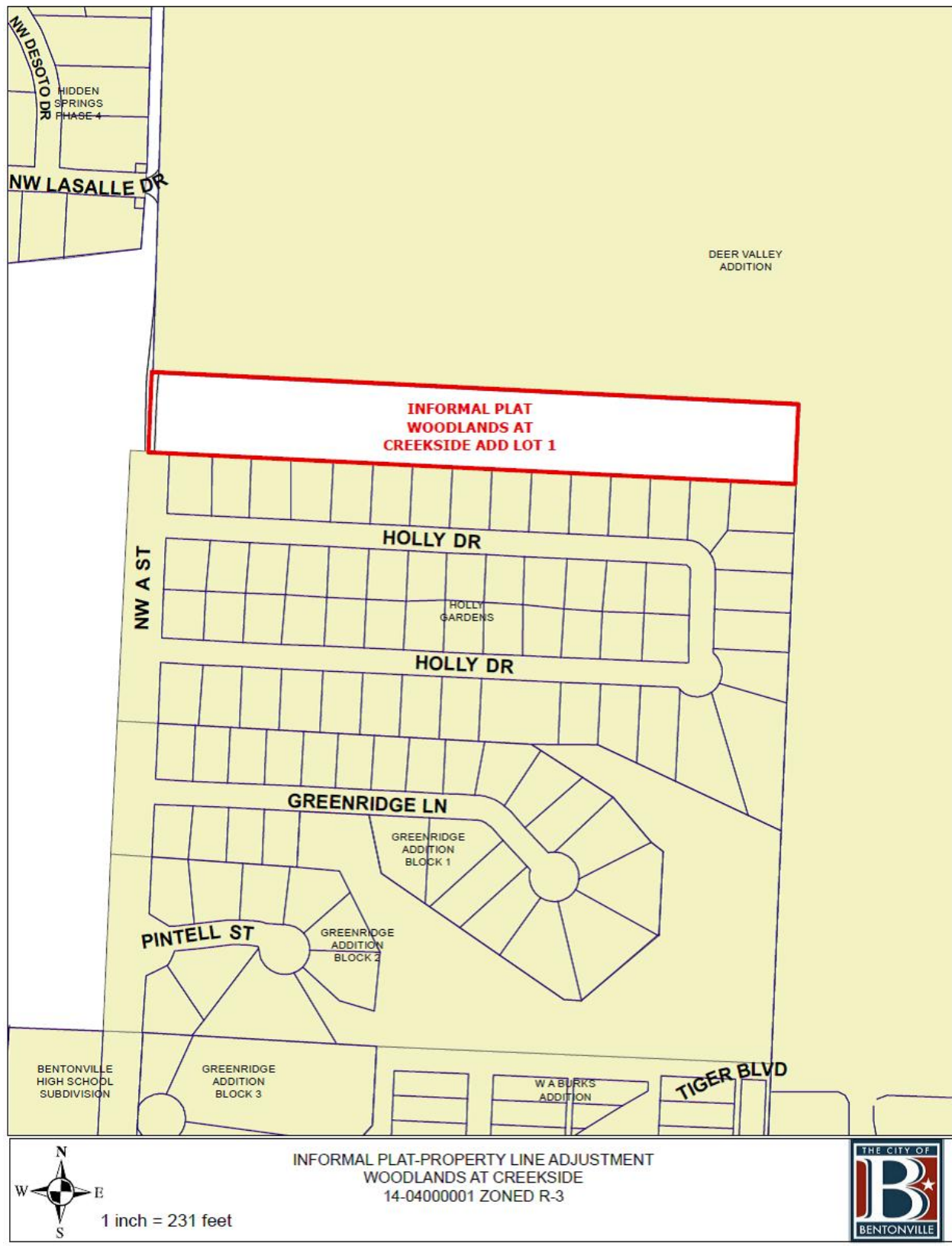
Drainage Report: A drainage report is not required for this lot split.

Water / Sewer: Per the G.I.S. site, water and sewer are available to this location.

Analysis / Conclusion: This lot split **DOES MEET** the minimum requirements of the subdivision regulations.

RECOMMENDATION:

Staff has reviewed this application and at the request of the applicant recommends that this item be **TABLED**.



ORDINANCE NO. _____

**AN ORDINANCE ACCEPTING A PROPERTY LINE ADJUSTMENT OF LOT 1,
WOODLANDS AT CREEKSIDE TO THE CITY OF BENTONVILLE, ARKANSAS.**

WHEREAS, pursuant to the provisions of Title 15 of the Bentonville Municipal Code, the property line adjustment of Lot 1, Woodlands at Creekside, to the City of Bentonville, Benton County Arkansas, was submitted to the Bentonville Planning Commission on the 15th day of July, 2014 and

WHEREAS, said property line adjustment is attached hereto as Exhibit "A" and

WHEREAS, the Bentonville Planning Commission considered said property line adjustment on the date stated and at other times, and voted to recommend the approval of said property line adjustment to the City Council; and

WHEREAS, the property line adjustment of real property as described herein has been submitted to the City Council of the City of Bentonville, and after consideration and deliberation said Council is of the opinion that said property line adjustment should be approved.

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

Section 1: That the property line adjustment of Lot 1, Woodlands at Creekside, to the City of Bentonville, Arkansas, should be and the same is hereby accepted and approved for all purposes.

Section 2: That the Mayor and City Clerk be and are hereby authorized and directed to evidence the acceptance of said property line adjustment by certifying said acceptance on the approved property line adjustment.

PASSED AND APPROVED THIS _____ DAY OF _____, 2014

ATTEST

APPROVED

CITY CLERK

MAYOR



CHECK ALL THAT APPLY	
Bid Award	Bid #
Budget Adjustment	
Change Order	
Informational	
Ordinance	
Resolution	
☒ Other	

AGENDA FORM

CITY COUNCIL MEETING OF: July 22, 2014

Submitted by: Public Art Advisory Committee

Department:

Phone:

ACTION REQUIRED:

Approval of the placement of a piece of artwork, titled NuPerry's Last Stand by Randy Regier, as part of the Crystal Bridges Museum of American Art upcoming exhibition *State of the Art: Discovering American Art Now* in the alley on the east side of Main Street, between Central Ave. and SW 2nd Street. The Public Arts Advisory Committee recommended the proposal by a vote of 3 - 0.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

[Signature] 7/11/14
Department Head Date

CT 7/11/14
Staff Attorney Date

Purchasing Agent Date

Tom 7/10/14
Mayor Date

DL 7-11-14
Finance Director Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE





MEMO

To: City Council
From: Public Arts Advisory Committee:
Dayton Castleman, Becky McCoy, Randy Townzen and Tom Hoehn
Ex-Officio: Shelli Kerr, David Wright, Kalene Griffith
Date: July 9, 2014
RE: Proposal for public art on public alley – *NuPenny's Last Stand*

The Public Art Policy adopted on May 14, 2013 requires any artwork proposed to be placed on public property be approved by both the Bentonville Public Art Advisory Committee and City Council.

On June 20, 2014, Crystal Bridges Museum of American Art submitted a proposal to install *NuPenny's Last Stand* by Randy Regier, as part of the upcoming exhibition: *State of the Art: Discovering American Art Now* (proposal attached). The proposed location is in the alley on the east side of Main Street, between Central Ave. and SW 2nd Street. The city has determined that this is a platted alley and is city of right-of-way.



The entrance to the alley currently has a bollard preventing vehicular activity. It is used primarily for pedestrians and cyclists. The applicant proposes to place it in such a manner as to allow both cyclists and pedestrians to pass through.

There is a sewer easement at that location. This information has been passed along to Crystal Bridges with the understanding that should the city need to conduct work on the sewer or other utilities the piece would have to be removed.

Building Inspection, Engineering, Public Works, Police and Fire have all seen the proposal and have determined that the placement at this location will not unnecessarily impede traffic or interfere with public safety.

On July 8, 2014, the Bentonville Public Art Advisory Committee recommended approval with a vote of 3-0 for the placement of a piece of artwork.



June 20, 2014

Contact information

Don Bacigalupi, President
Chad Alligood, Assistant Curator of Special of Special Projects
Crystal Bridges Museum of American Art
600 Museum Way
Bentonville, AR 72712
Chad: 479-657-2317
chad.alligood@crystalbridges.org

Title of the proposed work

NuPenny's Last Stand by Randy Regier

Desired location of proposed work

The preferred location selected for the work, as identified by Crystal Bridges and the artist, is the alley between RevUnit and Lawco Exploration on Main Street between Central and SW 2nd Streets.

Please refer to pages 6-9 for images of siting location and the sculpture.

Project/Installation description

Randy Regier's *NuPenny's Last Stand* has been selected by Crystal Bridges as part of the upcoming exhibition *State of the Art: Discovering American Art Now*. The sculpture is proposed to be installed in Downtown Bentonville sometime this summer prior to the exhibition opening on September 13, 2014. Installation dates are flexible, late July through late August are optimal, and may be scheduled in collaboration with a

Downtown committee, the Museum, and the artist. The artist will deliver the work and be on site during the installation. The sculpture will be slated for removal after the exhibition ends on January 19, 2015.

NuPenny's Last Stand is a sculptural installation that appears as a complete toy store. The contents of the store include custom designed and fabricated toys along with the requisite store components such as cash register, signage, shelves, clock, etc.; all rendered in photographic gray scale. The purposes for selecting a location outside the Museum galleries are not only to stay true to the external nature of the sculpture as intended by the artist, but also to make the experience available at all hours, which is not possible within the Museum or its grounds. The sculpture has a wondrous presence, most obvious when lit at night. Siting the work in an alley in proximity of other businesses accentuates the sense of something found and intriguing. The stand itself, a shiny icon of midcentury American confidence set amidst the real-life future it didn't predict, compels the questions: who put this here? Where did it come from? The work invites the viewer to create their own narrative to explain its appearance or look for answers. Placing the sculpture in the Downtown area also encourages *State of the Art* exhibition guests to explore beyond the bounds of the Museum campus, driving them to the square. In reverse, people who randomly come upon the work downtown may be inspired to visit the rest of the exhibition at the Museum.

The sculpture is a mixed media construction that is 167"h x 102"w x 76"d and weighs 1,800 pounds. The structure requires access to a single 110-volt outlet to power the lights and toys. The structure is complete and the artist is currently creating new toys for the interior. See images section for example of new work. Crystal Bridges will assume all responsibility for installation planning and production, costs incurred, and ongoing management of the work.

Project narrative

The artist has written the following about the project:

"NuPenny is an itinerant toy store. On the surface, and viewed as a retail establishment or typical sales model, *NuPenny* seems fundamentally flawed in connecting with those who desire to take its products home. True enough.

But on another level the store's reason for being is as a realm of carefully manufactured objects of desire that have not (or perhaps cannot) find either their place or time in the world. The toy store has made previous appearances in Waterville, Portland, and Sanford, Maine; Hays, Illinois; and Wichita, Kansas.

There are a number of reasons why I created this body of work and continue to elaborate upon it. But most compelling for me is the exploration of the experiences of desire and longing. To explore these I set out to create a physical place and occurrence that appears as if in a dream - familiar and believable yet somehow out of our grasp - in the physical sense but also slightly out of reach of our collective memory. Because of this the door of the *NuPenny* store is always locked and all text has been rendered in Teletype punch-tape code. The toys are all original constructions of mine; none of the toys are or were vintage playthings, nor are any of them made from toy parts. All toys in my *NuPenny* store are manufactured from 20th century industrial, scientific and household flotsam and jetsam, and from scratch when necessary.

Conceptually each toy is my interpretation of a song lyric, poem or literary work that has affected me. More toys will occur, and arrive in the store over time, as I have the means to make them.

Finally, the slogan 'I Love You,' as included in each *NuPenny* toy decal, box and related store signage, is quoted from the poem *Prayer In The Strip Mall, Bangor, Maine* by the poet Stuart Kestenbaum."

Artist Statement

"In 1928 the German literary critic Walter Benjamin wrote in his essay, *The Cultural History of Toys*, that, 'Children do not constitute a community cut off from everything else...their toys can- not bear witness to any autonomous separate

existence, but rather are a silent signifying dialogue between them [children] and their nation.' This is not only true for toys (of which much of my work is concerned), but for all manner of objects – artifacts – from our collective past that are formed and fabricated by human hands and intentions. This is the realm in which I work and play, and seek to understand my culture and history."

For more information about the artist and the *NuPenny* project, please visit:

<http://www.randyregier.com/artist-statement.php>

<http://nupennytoystore.com/>

Requested Funding/Proposed Budget

Crystal Bridges Museum of American Art will be underwriting any costs incurred for the installation, any on-going maintenance required during its presence, and removal of the artwork.

Potential City Concerns

The identified alley location is public property. The proposal has been reviewed and approved by the Bentonville Fire Department and Building Inspection Department. Troy Galloway of the Planning Department has also seen the information and noted he will follow the lead of the Public Art Advisory Committee regarding the endorsement of this proposal.

Regarding access for pedestrian and bicycle traffic around the work, the overall alley width is 141" and the sculpture is 102" wide, leaving 39" for passage. The initial plan was to center the sculpture within the alley but we are open to the option of adjusting it to one side, most likely toward the Lawco building, in order to provide more space to move around the work and through the alley. It may not be advisable for cyclists to ride through the tightened space but it would be wide enough to walk their bicycle through the gap.

In addition to potentially moving the sculpture to one side, there's flexibility regarding the placement depth between the façades of the buildings and the electricity meters in the alley. There is approximately four times the depth of the sculpture

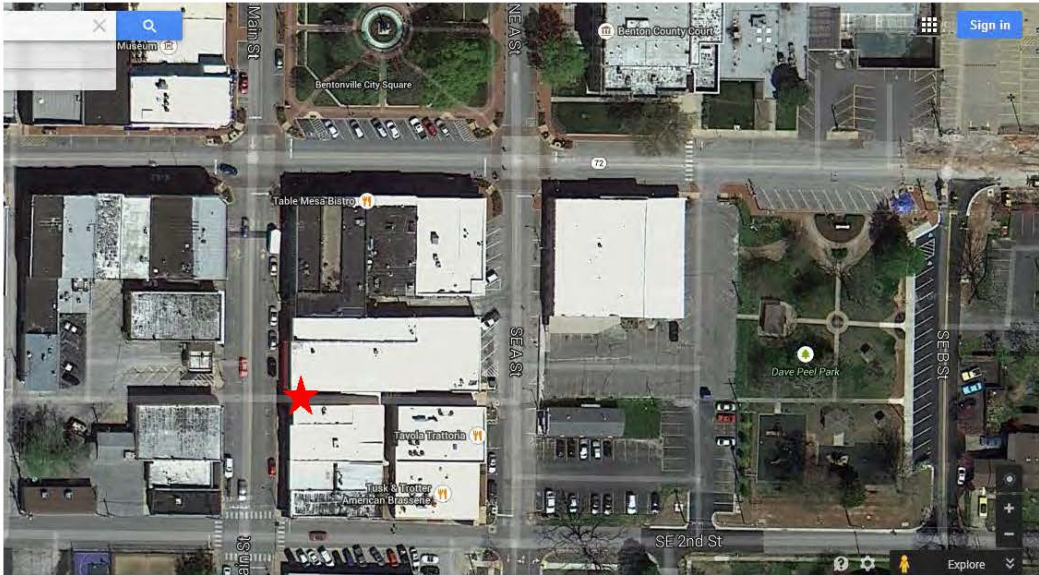
between the opening and the meters and the sculpture has plenty of room to be well clear of the recommended 36" from the front of the electrical boxes for utility access.

As a note, Crystal Bridges has also presented all proposed information to Randy Lawson, Chairman and CEO of Lawco, and has received his blessing and support for the proposed location. Should this proposal be approved, we will work with his office and any downtown representatives to arrange for power access for the sculpture.

Any additional concerns that come to light as a result of this proposal will be addressed prior to finalizing the exact installation placement.

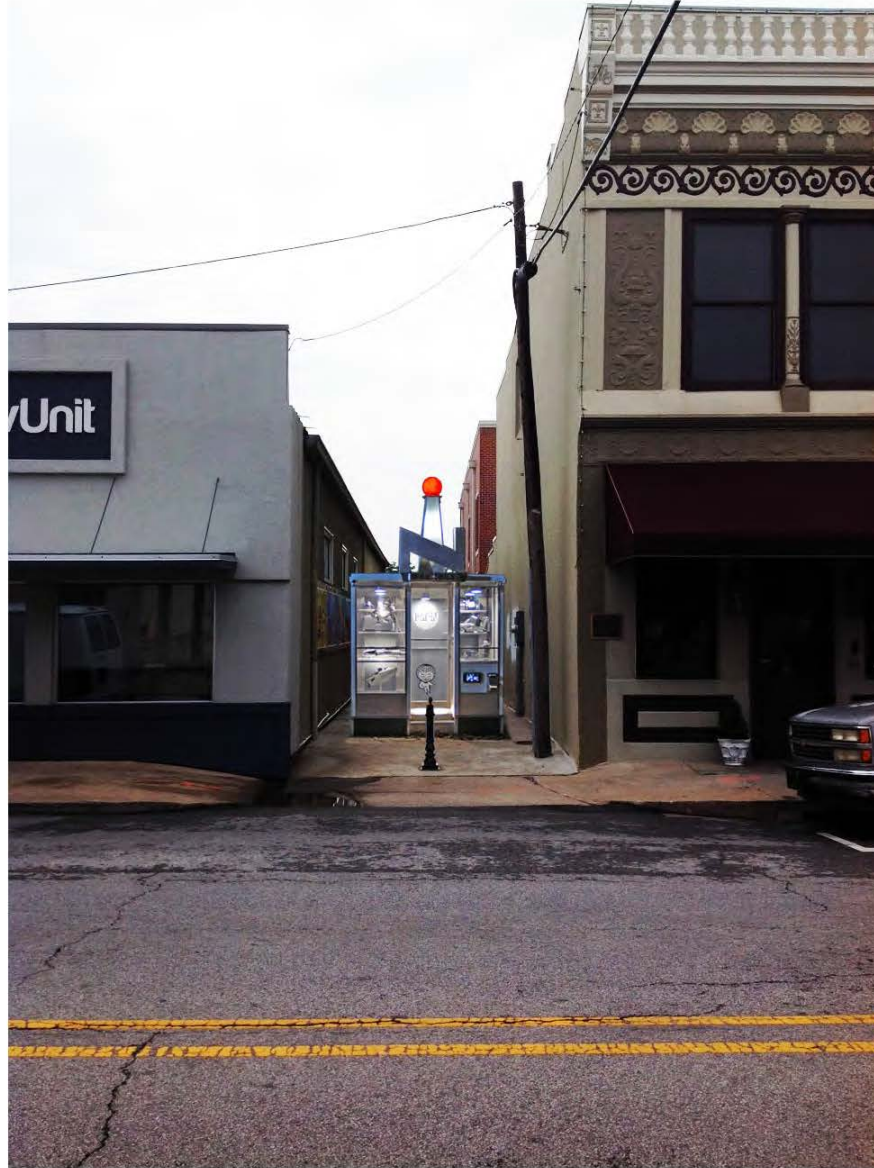
Proposed location:

Main Street alley between Central and SW 2nd Street



Site with Artwork





Example of a new toy to be included in the installation:
"Useless Factory"



Literary

source:

"IN all the cities of the world, it is the same," says Ionesco. "The universal and modern man is the man in a rush (i.e. a rhinoceros), a man who has no time, who is a prisoner of necessity, who cannot understand that *a thing might perhaps be without usefulness*; nor does he understand that, at bottom, it is the useful that may be a useless and back-breaking burden. If one does not understand the usefulness of the useless and the uselessness of the useful, one cannot understand art. And a country where art is not understood is a country of slaves and robots. . . ." (*Notes et Contre Notes*, p. 129)

NuPenny: Previous
Installations



Hays, Kansas



Riverside, IL



CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-3166

ACTION REQUIRED:

An ordinance vacating a street right of way located adjacent and south of Lot 37 Allencroft Addition to the City of Bentonville, Arkansas, Benton County, Arkansas.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head

Date

7-9-14

Purchasing Agent

Date

Finance Director

Date

Staff Attorney

Date

Mayor

Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE



ORDINANCE NO _____

ORDINANCE VACATING A STREET RIGHT OF WAY LOCATED ADJACENT AND SOUTH LOT 37 ALLENCROFT ADDITION TO THE CITY OF BENTONVILLE, ARKANSAS, BENTON COUNTY ARKANSAS.

WHEREAS, a petition was filed by City of Bentonville, with the City Council of the City of Bentonville, Arkansas, asking the City Council to vacate a street right-of-way located in the City of Bentonville, Benton County, Arkansas, which portion is more particularly described as follows:

R.O.W. Vacation Description

A portion of Tiger Boulevard as shown on the Final Plat for Allencroft to the City of Bentonville as recorded in Plat Book 2002 at Page 66 in Benton County, Arkansas, being described by metes and bounds as follows:

Beginning at the SW corner of Lot 37; thence S78°38'08"E, 63.00 feet; thence S11°21'52"W, 26.86 feet to the existing fence; thence along said fence S88°58'03"W, 64.50 feet; thence N11°21'52"E, 40.71 feet to the Point of Beginning, containing 2.128 Square Feet, more or less.

WHEREAS, after due notice as required by law, the Council has at the time and place mentioned the notice, heard all persons desiring to be heard on the question; that all the owners of the property abutting the easement to be vacated have joined in the petition or consented to the granting of the petition; and the public interest and welfare will not be adversely affected by the abandonment of the above described utility easement.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Bentonville, Arkansas:

Section 1: The City of Bentonville Arkansas releases, vacates and abandons all of its rights together with the rights of the public generally, as follows:

R.O.W. Vacation Description

A portion of Tiger Boulevard as shown on the Final Plat for Allencroft to the City of Bentonville as recorded in Plat Book 2002 at Page 66 in Benton County, Arkansas, being described by metes and bounds as follows:

Beginning at the SW corner of Lot 37; thence S78°38'08"E, 63.00 feet; thence S11°21'52"W, 26.86 feet to the existing fence; thence along said fence S88°58'03"W, 64.50 feet; thence N11°21'52"E, 40.71 feet to the Point of Beginning, containing 2.128 Square Feet, more or less.

Section 2: A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the Office of the Recorder of Benton County, Arkansas and recorded in the deed records of the County.

Section 3: This Ordinance shall take effect and be in force from and after its passage. The above and foregoing Ordinance was passed, approved, and adopted the _____ day of _____, 2014, at a regular meeting of the City Council of the City of Bentonville, Arkansas.

**LINDA SPENCE, City Clerk and
Recorder for the City of Bentonville,
Arkansas**

**BOB MCCASLIN, Mayor
City of Bentonville, Arkansas**





CHECK ALL THAT APPLY	
Bid Award	Bid #
Budget Adjustment	
Change Order	
Informational	
Ordinance	
Resolution	
Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-3166

ACTION REQUIRED:

A resolution setting a public hearing for a utility easement vacation request located at Lot 105 Phase 4, Wildwood Subdivision.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head

Date

7-7-14

Staff Attorney

Date

7/11/14

Purchasing Agent

Date

Mayor

Date

7/16/14

Finance Director

Date

7-7-14

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Russell Schilb, requesting a utility easement vacation within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

From NE corner of LOT 151 of Wildwood Subdivision Ph4 S2d27'1"w 15', thence N87-32-59w 7' to a point of beginning.

From POB N87-32-59w 129.03', S2-16-13w 5', S87-32-59E 129.03', Thence N2-27-1E 5' to the POB.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close and vacate a utility easement at the above described property is set for hearing on August 12, 2014, at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved and adopted the _____ day of _____ 2014 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
Bentonville, Arkansas

Bob McCaslin, Mayor
City of Bentonville, Arkansas





CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-3166

ACTION REQUIRED:

A resolution setting a public hearing for a utility easement vacation request by Kevin Sedlacek located in parts of Lots 8 and 9 of Woods Creek South.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head

7-9-14
Date

Staff Attorney

7/11/14
Date

Purchasing Agent

Date

Mayor

7/11/14
Date

Finance Director

7-11-14
Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Kevin Sedlacek, requesting a utility easement vacation within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

Part of Lots 8 and 9 of Woods Creek South, Phase 3, City of Bentonville, Benton County, Arkansas, as shown in Plat Book 2010, Page 93 of the Benton County Records, and being more particularly described as:

Commencing at the SW Corner of said Lot 8, thence N69°39'47" E 92.86 feet, thence N15°16'38" W 15.06 feet to the Point of Beginning, thence N15°16'38" W 120.16 feet, thence along a curve to the left, said curve having a radius of 295.00 feet, an arc length of 15.67 feet, a central angle of 03°02'33", and a chord bearing and distance of S88°32'16" E 15.66 Feet, thence S15°16'38" E 114.32, thence S69°39'47" W 15.06 feet to the Point of Beginning, containing 1,757.47 square feet.

WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close and vacate a utility easement at the above described property is set for hearing on August 12, 2014 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved and adopted the _____ day of _____ 2013 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
Bentonville, Arkansas

Bob McCaslin, Mayor
City of Bentonville, Arkansas





CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-3166

ACTION REQUIRED:

A resolution setting a public hearing for a utility easement vacation request by Rafael Colberg located in Lot 16 of The Bluffs.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head: [Signature] Date: 7-8-14

Purchasing Agent: [Signature] Date: [Blank]

Finance Director: [Signature] Date: 7-11-14

Staff Attorney: CT Date: 7/11/14

Mayor: [Signature] Date: 7/10/14

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Rafael Colberg, requesting a utility easement vacation within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

Located in a part of Lot 16 of The Bluffs Subdivision in Bentonville, Benton County, Arkansas, more precisely described as follows:

Starting at a set MAG nail at the Southwest Corner of Lot 16; thence along the South line of Lot 16, South 71 degrees 32 minutes 56 seconds East, 51.57 feet; thence along the existing building setback, utility & drainage easement line, North 32 degrees, 38 minutes, 39 seconds East, 96.42 feet to the true POINT OF BEGINNING; thence along the proposed easement release area the following courses: North 5 degrees, 21 minutes, 21 seconds West, 3.00 feet; thence parallel to the existing building setback, utility & drainage easement, North 32 degrees, 38 minutes, 39 seconds East, 25.00 feet; thence South 57 degrees, 21 minutes, 21 seconds East, 3.00 feet; thence along the existing building setback, utility & drainage easement, South 32 degrees, 38 minutes, 39 seconds, West, 25.00 feet to the true POINT OF BEGINNING containing 0.002 acres more or less.

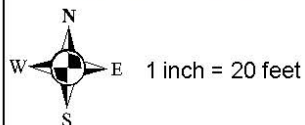
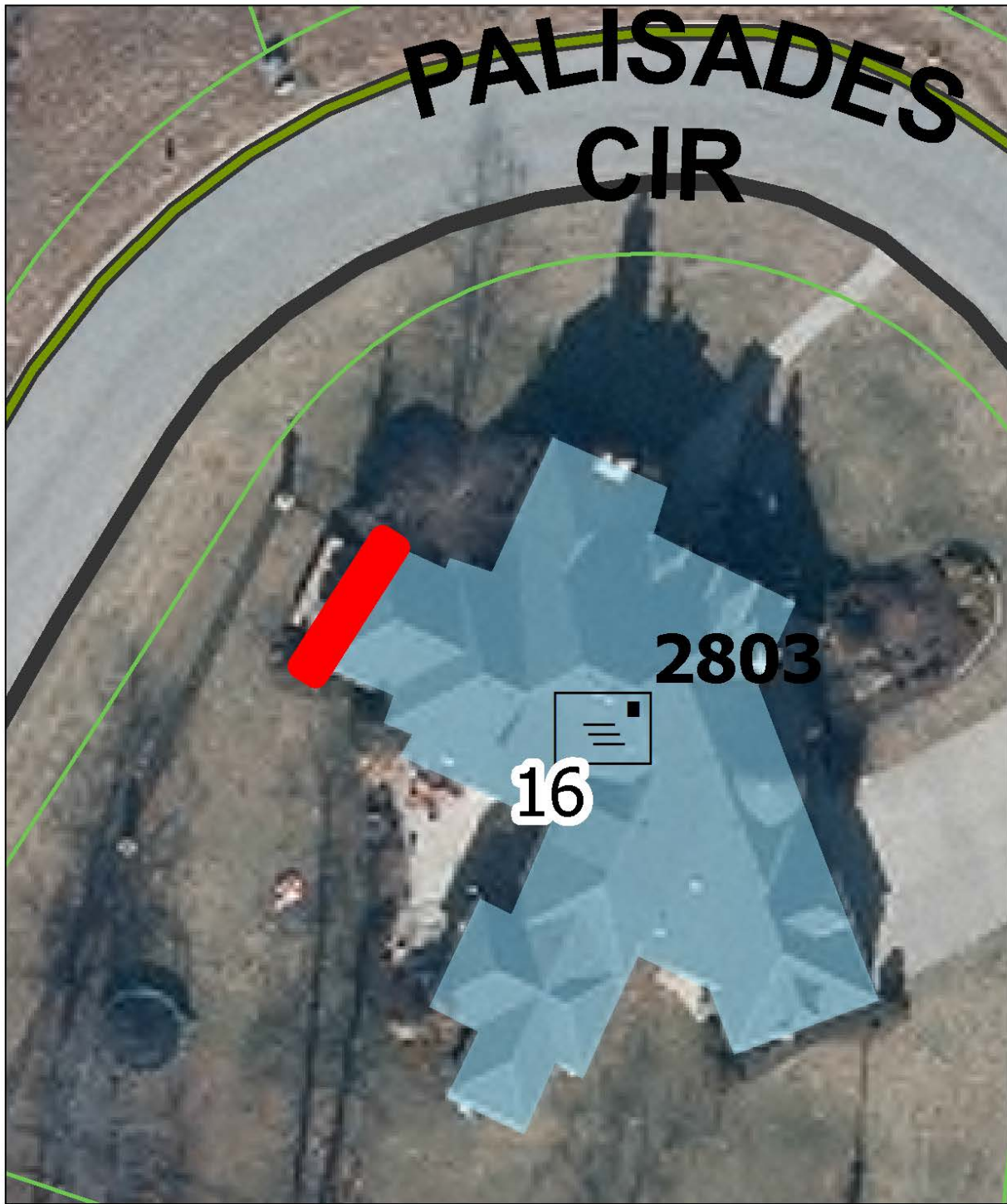
WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close and vacate a utility easement at the above described property is set for hearing on August 12, 2014 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved and adopted the _____ day of _____ 2013 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
Bentonville, Arkansas

Bob McCaslin, Mayor
City of Bentonville, Arkansas



Utility Easement Vacation
2803 Palisades Cir
Lot 16 The Bluffs Subdivision
75 Square Feet





CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-3166

ACTION REQUIRED:

A resolution setting a public hearing for a utility easement vacation request by Alan Cole located in Lot 1, Sunshine School Subdivision.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head _____ Date _____

Purchasing Agent _____ Date _____

Finance Director _____ Date _____

CT _____ 7/16/14
Staff Attorney _____ Date _____

PAM- _____ 7/16/14
Mayor _____ Date _____

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

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www.bentonvillear.com



PLEASE RECYCLE



RESOLUTION NO. _____

IN THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS

WHEREAS, a petition was duly filed with the City Council of Bentonville, Arkansas by Alan Cole, requesting a utility easement vacation within the City of Bentonville, Arkansas be vacated, which said utility easement is described as follows:

Part of Lot 1, Sunshine School Subdivision, City of Bentonville, Benton County, Arkansas as shown in Plat Book 2004, Page 735 of the Benton County Records, and being more particularly described as:

Commencing at the NW Corner of said Lot 1, thence S87°28'27"W 46.63 feet to the point of the beginning, thence S87°28'27"E 383.30 Feet, thence S02°58'25"W 15.00 Feet, thence N87°28'27"W 394.81 Feet, thence N40°18'46"E 18.98 Feet to the POINT OF BEGINNING, containing 5,834.85 square feet or 0.13 acres, more or less.

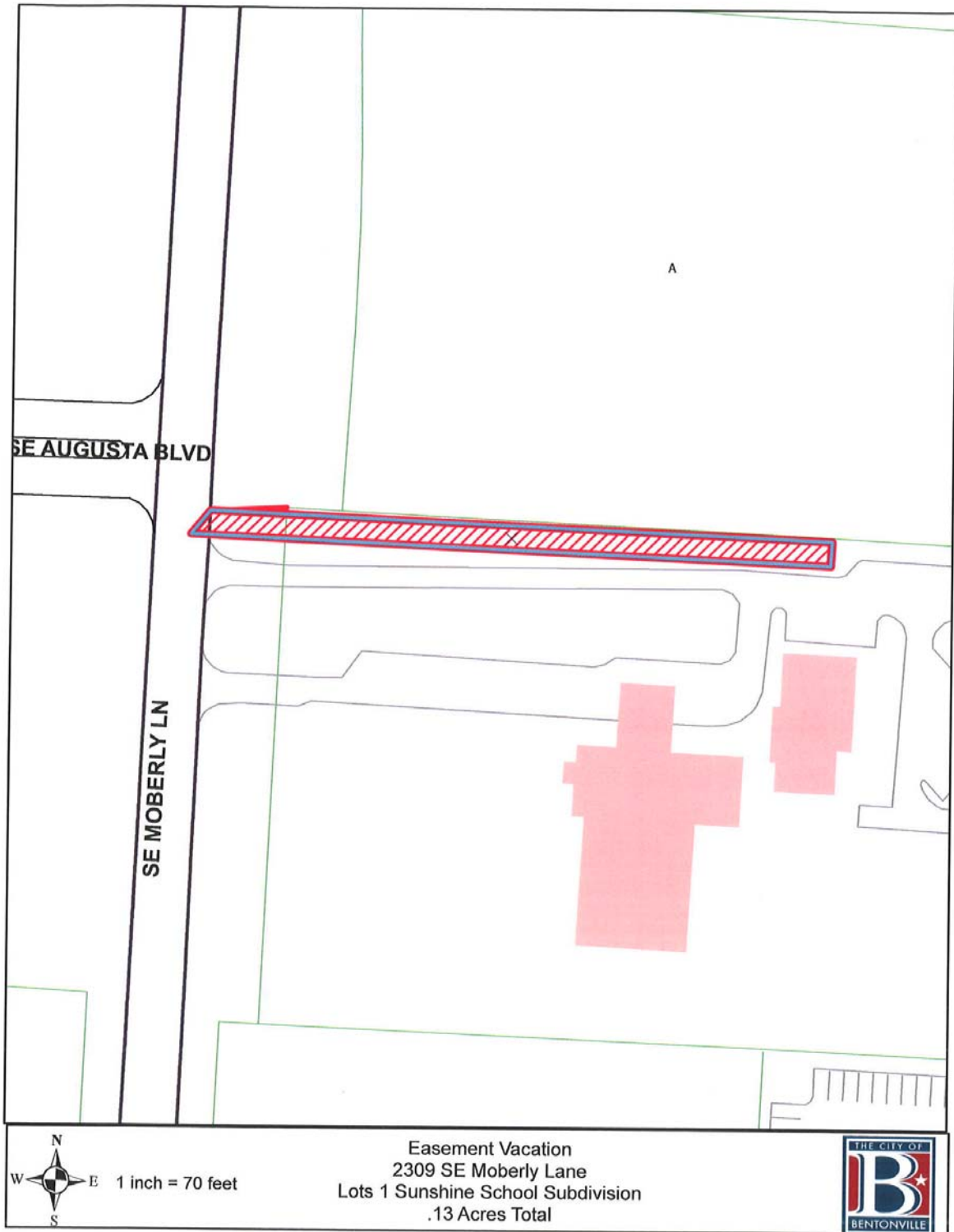
WHEREAS, Ark. Code Ann. Section 14-301-302(c) provides that the City Council shall by resolution fix a day for the hearing of the petition and shall direct the City Clerk and Recorder to give notice of the meeting, by publication, once per week for two (2) consecutive weeks in some newspaper published in and having general circulation in Bentonville, Benton County, Arkansas.

NOW, THEREFORE, BE IT RESOLVED, by the City of Bentonville, Arkansas, that the petition to close and vacate a utility easement at the above described property is set for hearing on August 26, 2014 at 6:00 p.m. in the City Council Room of the City of Bentonville, Arkansas, and the Bentonville City Clerk and Recorder is directed to give notice of this meeting by publication as set forth by Ark. Code Ann. Section 14-301-302(c).

The above and foregoing resolution was passed, approved and adopted the _____ day of _____ 2014 at a regular meeting of the City Council of the City of Bentonville, Arkansas.

Linda Spence, City Clerk
Bentonville, Arkansas

Bob McCaslin, Mayor
City of Bentonville, Arkansas





CHECK ALL THAT APPLY			
x	Bid Award	Bid #	14-38
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479271-5993

ACTION REQUIRED:

Approval of Bentonville City Council to award Bid #14-38 to General Construction Solutions for the construction of sidewalks along SE "C" Street, both north and south of the intersection of SE 22nd Street and SE "C" Street. The contract amount for this project is \$44,444.00 with a 10% contingency of \$4,444.40 brings the total project amount to \$48,888.40.

COST TO CITY:

Cost of this Request: \$48,888

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head

Date

Purchasing Agent

Date

Finance Director

Date

CT
Staff Attorney

7/11/14
Date

Pam
Mayor

7/16/14
Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



Memorandum

To: Mayor and City Council
From: Bryan Weickersheimer, Project Manager
Date: Friday, July 11, 2014
Re: Bid Award for SE C Street Sidewalk Improvements



Staff is seeking City Council approval of Bid #14-38 for the SE C Street Sidewalk Project. This project includes constructing approximately 1000 linear feet of sidewalk, both north and south of the intersection of SE 22nd Street and SE C Street. SE C Street Sidewalk Improvements received the following bids:

Diamond C Construction	\$46,683.90
General Construction Solutions	\$44,444.00

Staff is seeking City Council approval of bid award to General Construction Solutions. Contract amount for project is \$44,444.00 plus a 10% contingency of \$4,444.40 which brings the project total to \$48,888.40.

Staff recommends approval of the contract as written.

Please contact me with any questions or concerns regarding the proposed contract or the project as a whole. My telephone number is (479) 271-3168 or I can be reached via email at bweickersheimer@bentonvillear.com.

SE C Street Sidewalk Improvements			Diamond C			GCS		
Item #	Item	Unit	QTY	Unit Price	Extended Price	Unit Price	Extended Price	
111	Construction Control	LS	1	\$ 915.80	\$ 915.80	\$ 3,510.00	\$ 3,510.00	
502	5' Concrete Sidewalk	LF	605	\$ 33.25	\$ 20,116.25	\$ 28.31	\$ 17,127.55	
502	6' Concrete Sidewalk	LF	325	\$ 41.57	\$ 13,510.25	\$ 30.46	\$ 9,899.50	
505	Seeding and Mulching	Acre	0.1	\$25,300.00	\$ 2,530.00	\$11,813.00	\$ 1,181.30	
505	Additional Watering	MG	2	\$ 690.00	\$ 1,380.00	\$ 848.95	\$ 1,697.90	
507	Crosswalks (Thermoplastic)	LF	100	\$ 21.85	\$ 2,185.00	\$ 20.98	\$ 2,098.00	
509	Erosion Control	LS	1	\$ 545.00	\$ 545.00	\$ 1,578.25	\$ 1,578.25	
510	Traffic Control and Maintenance	LS	1	\$ 1,150.00	\$ 1,150.00	\$ 1,364.00	\$ 1,364.00	
511	Mobilization (5% MAX)	LS	1	\$ 2,200.00	\$ 2,200.00	\$ 1,950.00	\$ 1,950.00	
513	Concrete Handicap Ramp	SY	30	\$ 41.92	\$ 1,257.60	\$ 53.17	\$ 1,595.10	
513	Cast-in-Place Tactile Panel	SF	8	\$ 31.25	\$ 250.00	\$ 81.80	\$ 654.40	
SP	Adjust Existing Water Valve	EA	2	\$ 172.50	\$ 345.00	\$ 650.00	\$ 1,300.00	
	Stand Up Curb	LF	20	\$ 14.95	\$ 299.00	\$ 24.40	\$ 488.00	
				Totals	\$ 46,683.90		\$ 44,444.00	



CHECK ALL THAT APPLY			
	Bid Award	Bid #	
x	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: (479) 271-5993

ACTION REQUIRED:

City Council to approve a budget adjustment of \$48,888.40 to be used for SE C Street Sidewalk Improvement.

COST TO CITY:

Cost of this Request:	\$48,888.40
Additional Budget Amount	\$0

☒ One time amount ☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	48,888.40
Remaining After Adjustment	\$ 48,888.40

Department Head _____ Date _____
Purchasing Agent *KB* _____ Date *7/11/14*
Finance Director *TOL* _____ Date *7-11-14*

CT _____ Date *7/11/14*
Staff Attorney _____ Date _____
Mayor *PM* _____ Date *7/11/14*

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

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PLEASE RECYCLE



Memorandum

To: Mayor and City Council
From: Bryan Weickersheimer, Project Manager
Date: Friday, July 11, 2014
Re: Bid Award for SE C Street Sidewalk Improvements



DESIGNING THE FUTURE

Staff is seeking City Council approval of Bid #14-38 for the SE C Street Sidewalk Project. This project includes constructing approximately 1000 linear feet of sidewalk, both north and south of the intersection of SE 22nd Street and SE C Street. SE C Street Sidewalk Improvements received the following bids:

Diamond C Construction	\$46,683.90
General Construction Solutions	\$44,444.00

Staff is seeking City Council approval of bid award to General Construction Solutions. Contract amount for project is \$44,444.00 plus a 10% contingency of \$4,444.40 which brings the project total to \$48,888.40.

Staff recommends approval of the contract as written.

Please contact me with any questions or concerns regarding the proposed contract or the project as a whole. My telephone number is (479) 271-3168 or I can be reached via email at bweickersheimer@bentonvillear.com.



Budget Adjustment #
(Assigned by Admin)

Department: Engineering

Date of Request: July 10, 2014

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
	General Fund		\$ 48,888.40	\$ (48,888.40)
10-1630-463.73-84	Improvements other than Building/Sidewalks	\$ 48,888.40		\$ 48,888.40
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ 48,888.40	\$ 48,888.40	\$ -

Justification:

Justification: Re-allocation of funds from the General Fund to Engineering (as described above) in the amount of \$48888.40. This is to correspond with the Budget Adjustment Request for SE C Street Sidewalk Improvements.

FOR ACCTING USE ONLY

Council Action: Approved Disapproved Other

Date: _____ Date entered: _____ By: _____

Revised 5/1/07

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CHECK ALL THAT APPLY			
x	Bid Award	Bid #	14-36
	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: David Wright

Department

Parks & Recreation

Phone

464-7275

ACTION REQUIRED:

The Parks and Recreation Staff are seeking City Council's approval of a bid award for bid #14-36 in the amount of \$68,985.68 for the construction of the pathways of the Legacy Orchards at Orchards Park.

COST TO CITY:

Cost of this Request: \$68,985

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ 77,800
Funds Expended to Date	-
Remaining Budget	
Budget Adjustment	-
Remaining After Adjustment	\$

DW 7/9/2014
Department Head Date

KB 07/10/14
Purchasing Agent Date

DL 7-11-14
Finance Director Date

CT 7/11/14
Staff Attorney Date

BoM 7/11/14
Mayor Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

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PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin
From: David Wright, Parks and Recreation Director
Date: July 9, 2014
Re: Council approval to award Bid # 14-36 to Diamond C Construction, in the amount of \$68,985.68, for the construction of the pathways at the Legacy Orchards at Orchards Park.

Parks and Recreation Staff requests City Council approve a bid award to Diamond C Construction, in the amount of \$68,985.68 for the construction of the Legacy Orchards at Orchards Park.

For several years, the Parks and Recreation Advisory Board debated the best use of the land in the most southern part of Orchards Park. The open green space was a raw piece of open land, adjacent to a beautiful area. The PRAB and the staff mutually agreed to improve the property, but we did not rush into a decision.

In 2013, after months of debating, PRAB Chairman Scott Eccleston presented concept drawing that was inspired by conversations of our board members. The concept drawing, attached to this memo, showed a beautiful tree orchard comprised of legacy sugar maple trees. The orchard was inspired by the name of the park that pays tribute to Benton County's agricultural history.

When Eccleston presented the concept drawings, the PRAB was very excited to approve the project and put the plan in motion. Parks and Recreation Staff worked closely with Planning Staff and the Tree and Landscape Committee to fund the installation of irrigation and the first 90 trees for the project in 2013. The remaining 90 trees were planted in Spring 2014.

Now, the next part of the project is the installation of the crushed stone pathways that will lead through the orchard. With assistance of the City's Engineering Department, a design and specification was developed and bids published. Bids were originally opened on February 12. That opening resulted in a bid award to Boulder Construction on February 22. However, after awarding bids, but prior to signing contracts a discrepancy was found in bid documents. After meeting with Boulder, as well as other bidders, City Staff determined the best action was to rebid the project.

The project was bid for a second time, with a bid opening on July 8. The low bidder for the project was Diamond C Construction, at the price of \$68,985.68.

This project was included in the 2014 operational budget. A total of \$77,800 was budgeted for the project. If Council approves this bid, this sixty (60) day job should begin towards the end of August and conclude by October 31. If you have any questions regarding this item, please call me at 464.7275 or email dwright@bentonvillear.com.

Attachments:

Bid Tabulation

City of Bentonville
 Bid #14-36
 Legacy Trail Project
 7/8/2014 14:00

Name	Bid Bond	Bid
Boulder Construction		
→ Diamond C. Construction	✓	68,985.68
Fochtman Enterprises, Inc.		
→ General Solutions Group	✓	69,494.00



CHECK ALL THAT APPLY	
	Bid Award
	Budget Adjustment
	Change Order
	Informational
X	Ordinance
	Resolution
	Other

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Travis Matlock

Department: Electric

Phone: 271-3135

ACTION REQUIRED:

An ordinance authorizing the Mayor and City Council to enter into a agreement with Modern Fence & Supply Co. for repair/replacement of 7 different gates located at the City of Bentonville Inventory Warehouse and the Electric Department for an amount not to exceed \$36,990.00.

COST TO CITY:

Cost of this Request: \$36,990

Additional Budget Amount:

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$
Funds Expended to Date	
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

TWM 7/10/14
Department Head Date

CT 7/11/14
Staff Attorney Date

Purchasing Agent Date

PAM 7/10/14
Mayor Date

DL 7-11-14
Finance Director Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

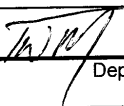
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PLEASE RECYCLE



REQUEST FOR WAIVER OF BID

Date	<u>7/10/2014</u>		
Requested by:	<u>Travis Matlock</u>		
Department:	<u>Electric</u>		
DESCRIPTION OF REQUEST:			
Type of Equipment:	<u>Automated Gate Repair/Replacement</u>		
Year & Model:	<u></u>		
Serial #	<u></u>		
To Be Purchased From:	<u>Modern Fence & Supply Co.</u>		
	<u>1864 Ford Street</u>		
	<u>Springdale, AR 72764</u>		
Amount:	Base Amount:	\$	<u>36,990.00</u>
	Tax:		<u></u>
	*Other:		<u></u>
	TOTAL	\$	<u>36,990.00</u>
* List all other costs:			
JUSTIFICATION FOR REQUEST FOR WAIVER OF BID:			
The City of Bentonville requests approval to enter into an agreement with Modern Fence and Supply Co. for repair/replacement of 7 different gates located at the City of Bentonville Inventory Warehouse and Electric Department. The gates have a variety of issues needing attention including, jumping off of the tracks, not closing all the way, not operating if it is too hot/cold, etc. Modern Fence has inspected and determined the issues needing repair or replacement. Due to the number of gates needing service, and the fact that the gates are needed to safeguard the City of Bentonville's equipment and vehicle fleet, we request a waiver of bid Not To Exceed \$36,990.00.			
 _____ Department Head		 _____ Director of Finance & Administration	
Revised 6-18-99			

M E M O R A N D U M

DATE: June 13, 2014

TO: **City Council, Mayor McCaslin**

FROM: Travis Matlock, Engineering Director

RE: **Agreement with Modern Fence and Supply Co.**

The agreement with Modern Fence will allow them to repair or replace 7 different gates located at the fuel pumps, Inventory Warehouse, and the Electric Department. There are a variety of problems. Some of the gates do not close all the way, some consistently jump off the tracks, and some will not operate when there is heavy rain or extremely cold weather. Modern Fence has inspected each gate and has recommended solutions to each problem. This will be a not to exceed cost of \$36,990.00.



Phone 479-443-5122 FAX 479-442-7173
1864 Ford Street
Springdale, Arkansas 72764

February 24, 2014

QUOTE/PROPOSAL

CITY OF BENTONVILLE ELECTRIC DEPT.
ATTN: TRAVIS

RE: GATE REPLACEMENTS.

PLEASE CONSIDER OUR FENCE BID FOR THE ABOVE LOCATION:

3RD STREET ELECTRIC GATE

REMOVE EXSISTING GATE. SET NEW 4" SCH40 GATE POSTS.
INSTALL NEW 18' CANTLEVER GATE. RE-ATTACH GATE OPERATOR.
TOTAL: \$3,750.00.

3RD STREET WATER GATE

REMOVE EXSITING ROLL GATE AND SET NEW 4" GATE POSTS.
INSTALL NEW 24' CANTLEVER GATE AND ROLLERS.
RE-ATTACH GATE OPERATOR.

TOTAL PRICE: 4,050.00.

F STREET GATES

REMOVE 4 EACH EXISTING ROLL GATES. SET NEW 4" GATE POSTS.
INSTALL 4 EACH NEW CANTLEVER GATES AND ROLLERS.
RE-ATTACH OPERATORS.

TOTAL PRICE: \$14,595.00.

FUEL GATES:

REMOVE 4 EACH EXISTING GATES . SET NEW GATE POSTS.
INSTALL 4 EACH NEW CANTLEVER GATES AND ROLLERS.
RE-ATTACH OPERATORS.

TOTAL PRICE: \$14,595.00.

4TH STREET GATE.

THIS GATE WILL NEED TO BE TROUBLE SHOT BY OUR TECH.
WE CAN TROUBLE SHOOT AND DIAGNOS AT OUR STANDARD RATE OF
\$85.00 PER HOUR AND ADVISE AT THAT TIME.

**ALT 1: TO CHANGE OUT EXISTING PHOTO BEAMS FROM REFLECTIVE
TO IFRA RED THROUGH BEAM: \$700.00 PER SET.**

**MODERN FENCE IS UNDER THE ASSUMPTION OF ALL GATE OPRATORS
BEING IN GOOD WORKING CONDITION. AFTER INSTALLATION OF
GATES PRICE INCLUDES SERVICING OF GATE OPRATORS. ANY OR ALL
OPERATORS NOT IN WORKING CONDITION WILL BE DIOGNOSED AT A
RATE OF \$85.00 PER HOUR.**

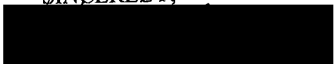
ANY PARTS WILL BE AN EXTRA CHARGE.

**TOTAL FOR ABOVE WORK TO CHANGE OUT ALL GATES LISTED
INCLUDING RE-ATTACHING OPERATORS AND SEVICING GATES:**

\$36,990.00.

PLEASE FEEL FREE TO CALL WITH ANY QUESTIONS.

SINCERELY,


Randy Ward, CFP, CAGOI
General Manager
Modern Fence and Supply, Inc
Modern Control Access, Inc.
479 443 5122
Cell 479 263 7563

7/3/14

ACCEPTED BY: _____ DATE: _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR AND THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH MODERN FENCE & SUPPLY CO. FOR REPAIR/REPLACEMENT OF CERTAIN GATES AT CITY FACILITIES AND WAIVING THE REQUIREMENT OF COMPETITIVE BIDDING.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into a contract with Modern Fence & Supply Co. for re[air/replacement of 7 gates located at the City of Bentonville Inventory Warehouse and the Electric Department for an amount not to exceed \$36,990.00 as per the Proposal attached hereto as Exhibit A.

Section 2: Due to the need to immediately repair the gates in order to safeguard the City's equipment and property, it would be neither practical nor feasible to advertise for competitive bidding, and that requirement is herein waived.

PASSED and APPROVED this ____ day of _____, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY	
Bid Award	Bid #
Budget Adjustment	
Change Order	
Informational	
Ordinance	
X Resolution	
Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Mike Bender

Department: Public Works Director

Phone: 271-6720

ACTION REQUIRED:

Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a real estate contract with Affordable Arkansas Homes, LLC for the sale of property referenced as City Maintenance Facilities (9.89 acres on SE 3rd Street), Head Start Facility (1.5 acres at 802 NW A Street), Lots 1, 2 and 3 of Price Coffee Addition (142 acres) and 9.5 acres on southern end of Tiger Tank (parcel no. 18-09863-001) for the sum of \$7,000,000.00 plus seller associated closing costs. See attached memo and real estate contract.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

Department Head: [Signature] Date: 7/10/14

Purchasing Agent: _____ Date: _____

Finance Director: [Signature] Date: 7-11-14

Staff Attorney: CT Date: 7/11/14

Mayor: [Signature] Date: 7/10/14

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

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PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender *[Signature]*

CC:

Date: July 10, 2014

Re: Sale of City Facilities, Purchase of Rose Property and Associated Budget Adjustment, Lease Agreement for City Facilities

This memo covers Four Council agenda items – 1) Real Estate Contract with Affordable Arkansas Homes, LLC for the Sale of City Facilities, 2) Real Estate Contract with Rose Properties, LLC for Purchase of 37 acres on Airport Road, 3) associated budget adjustment, and 4) Lease Agreement with Affordable Arkansas Homes, LLC.

Over the last couple of years there have been several discussions regarding the relocation of the City's SE 3rd Street complex which includes the Street Department, Water Utilities Department, Electric Department and Inventory Warehouse. Several options have been presented to Council including relocation of the Street Department to Melissa Drive and construction of a new Water Admin Building and enclosing Town Branch Creek at the existing SE 3rd Street location to facilitate growth needs of the City utilities departments. Staff has continued to pursue all options in hopes the best solution for the City as a whole is selected and developed. I believe the proposal presented herein is the best opportunity to relocate City facilities from the SE 3rd Street campus to provide for a centrally located, shared complex that allows for growth/expansion of all affected departments.

Staff is proposing to sell the SE 3rd Street Facilities along with other properties to bring in revenue to support relocation and purchase 37 acres located on the south side of Airport Road immediately east of the City Airport for construction of a new, combined facility. The attached agreements reflect the sale of the City Facilities to Affordable Arkansas Homes, LLC for \$7,000,000.00 along with a lease agreement for the SE 3rd Street Facilities to allow the City time to develop a Master Plan for the Rose property and construction of the initial development. The City will receive the \$7,000,000.00 at the time of closing. The City will then lease the property back for \$1 per year. The lease agreement has the timeline for vacating the premises which allows 2 years for the Water and Street portions and 4 ½ years for the remaining portions. Development of the property will include a master plan for overall development of the property followed by plans for immediate development. A consultant contract will be brought back to Council

after staff has advertised and selected a consultant. Money from the sale of the City facilities will cover the \$5,200,000.00 purchase cost of the 37 acres on Airport Road. The 37 acres consists of 18 acres zoned Industrial and 19 acres zoned C-2 Commercial.

Development will be funded by utilizing money already budgeted for relocation or expansions. If you recall, Street has approximately \$5,000,000.00 earmarked for relocating their facilities, Water Department budgeted \$1,500,000.00 for construction of a new administration building this year, and Electric identified \$1,500,000.00 for enclosing Town Branch Creek this year to expand storage and parking. This yields \$8,000,000.00 available for development. The sale of City facilities will leave \$1,800,000.00 for the project. There is also \$3,500,000.00 available in reserves for this project yielding a total of \$13,300,000.00 available immediately for this project. In addition, all departments could budget additional money in the 2015 budget as we move into the design phase and better understand costs. Once a Master Plan is complete, it will be presented to Council along with anticipated costs. Contracts and budget adjustments, as needed, will also be presented to Council as the project progresses.

The four properties to be sold in this agreement include all City facilities in the SE 3rd Street Campus (just under 10 acres), the Head Start Facility (1.5 acres), Price Coffee Property (142 acres), and 9.5 acres from the south end of the Tiger Tank Property. Maps illustrating the extent of the properties are also attached.

Thank you for your consideration of this request

REAL ESTATE CONTRACT

1. **PARTIES:** Affordable Arkansas Homes, LLC (the "Buyer") offers to purchase, subject to the terms and conditions set forth herein, from the City of Bentonville (the "Seller"), the real property, fixtures and improvements described in Paragraph 2 of this Real Estate Contract (collectively the "Property").
2. **ADDRESS AND LEGAL DESCRIPTION:** The following described real estate together with all fixtures and improvements located thereon:

See Exhibit A attached hereto and incorporated herein by reference.

3. **PURCHASE PRICE:** Buyer shall pay the following to Seller for the Property (the "Purchase Price"): \$7,000,000.00 cash at closing by wire transfer.
4. **CONVEYANCE:** Conveyance of the Property shall be made to Buyer by general warranty deed, in fee simple absolute, except it shall be subject to recorded instruments and easements if any, which do not materially affect the value of the Property (collectively "Permitted Encumbrances"). Unless expressly reserved herein, SUCH CONVEYANCE SHALL INCLUDE ALL MINERAL RIGHTS OWNED BY SELLER CONCERNING AND LOCATED ON THE PROPERTY, IF ANY. Seller warrants and represents that only those signatures set forth below are required to transfer legal title to the Property. Seller also warrants and represents that Seller has peaceable possession of the Property, including all improvement and fixtures thereon, and the legal authority and capacity to convey the Property by a good and sufficient warranty deed, free from any liens, leaseholds or other interests except for the Permitted Encumbrances.
5. **TITLE INSURANCE:** Within ten (10) days of acceptance, Seller shall furnish to Buyer a commitment for an American Land Title Association (ALTA) Form B owner's title insurance policy in the amount of the Purchase Price issued by WACO Title Company (the "Title Company"). The Closing Agent shall be WACO Title Company.

Where the title commitment (or the survey described in Section 7 hereof), shows special exceptions or defects to title other than those standard exceptions contained in the ALTA commitment form or other matters, and where such special exceptions or other matters relate to restrictions, conditions, defects or other issues that would interfere with Buyer's intended use or feasibility or adversely affect the value of the Property as determined in Buyer's sole discretion, then prior to the end of the Due Diligence Period as defined in Section 13 hereof, Buyer shall deliver written notice thereof to Seller. Such notice shall state specifically those exceptions to which Buyer objects. All objections not specifically enumerated within such a timely delivered notice shall be deemed to be waived by Buyer.

Within ten (10) days of Buyer's delivery of notice of objections to Seller, Seller may cure, but shall not be required to cure such objections which a cure shall include the option to have the exception waived or removed by the Title Company. If within such ten (10) day period, Seller fails to cure such objections and exceptions to Buyer's sole satisfaction, or within that period, Seller delivers written notice to Buyer that it will not so cure, then within ten (10) days from delivery of such notice from Seller or the end of the period within which Seller may cure (whichever is applicable), Buyer, as its sole remedies, shall have the option to:

- a. Terminate this Real Estate Contract by delivering written notice thereof to Seller, in which event all sums paid or deposited by Buyer shall be returned to Buyer; or
- b. Agree to Purchase the Property as scheduled subject to such objections and exceptions (which shall be included as Permitted Encumbrances) with no reductions in the Purchase Price;
- c. Agree to Purchase the Property as scheduled subject to such objections and exceptions (which shall be included as Permitted Encumbrances) with such reduction in the Purchase Price as agreed to by Seller; or
- d. Agree with Seller, at Buyer's discretion, to extend the Closing to give Seller additional

time to cure such objections.

If Buyer fails to deliver notice of termination, agree with Seller as to a reduction in the purchase price, or grant an extension of the Closing date within that five (5) day period, the objections shall be deemed to be waived (which objections shall be included as Permitted Encumbrances) and the transaction shall close as scheduled.

Seller shall pay the premium for a standard or basic title insurance owner's policy issued by the Title Company in the amount of the Purchase Price and Buyer shall pay the costs and premiums associated with any extended coverage (including mineral rights) requested by Buyer and/or endorsed to the owner's title insurance policy.

6. **EARNEST MONEY:** Earnest money, in the amount of \$10,000.00 ("Earnest Money") which shall apply toward Buyer's Purchase Price or transaction costs shall be deposited by Buyer with the Closing Agent within five (5) days after acceptance. If the sale fails to close for any reason other than a default of Buyer, the Earnest Money shall be promptly refunded to Buyer. If Buyer fails to fulfill its obligations under this Real Estate Contract, or if after all conditions have been met Buyer fails to close this transaction, the Earnest Money shall be retained by Seller as liquidated damages as its exclusive remedy. Buyer and Seller agree that in the event of any dispute concerning entitlement to Earnest Money, Closing Agent may interplead Earnest Money into a court of competent jurisdiction, and upon such interpleading of Earnest Money, Closing Agent shall be released from liability to Buyer and Seller. Closing Agent shall be reimbursed all costs and attorney's fees from the funds entered for interpleading.

7. **SURVEY / REPORTS:** Buyer may, at its expense, cause to be prepared, certified and furnished to Buyer and Title Company, current ALTA surveys ("Survey") of the Property by a registered public surveyor. Seller shall provide to Buyer within five (5) days after the acceptance date, copies of existing environmental site assessments, surveys, appraisals and other reports in its possession if any, with respect to the Property.

8. **PRORATIONS:** Seller represents that as a municipal entity, no taxes or special assessments are due on the Property. Buyer shall be responsible for any such taxes or assessments for periods after the Closing.

9. **FIXTURES AND ATTACHED EQUIPMENT:** All fixtures and improvement, except those listed in Exhibit C, located on the Property, are included in the Purchase Price.

10. **CLOSING:** Closing is the date and time at which Seller delivers the executed and acknowledged deed. Buyer and Seller agree the Closing date will be fifteen (15) days after the end of the Due Diligence Period unless otherwise extended as provided herein. The Closing date may be changed by written agreement of Buyer and Seller. If the sale is not consummated by the Closing date (or any written extension thereof), the parties shall have the remedies available to them as provided herein.

It shall be a condition of Buyer's obligations to close that all approvals necessary for the lot split for the south end of the Tank Lot have been obtained and filed of record.

At Closing, Buyer and Seller agree to enter into the Lease Agreement a copy of which is attached hereto as Exhibit "B", for the lease of the City Maintenance Facility (the "Lease").

This Real Estate Contract shall serve as written closing instructions to the Closing Agent on behalf of the Buyer and Seller. The Closing Agent is authorized to provide Seller's settlement statement to any listing firm (in addition to Seller) and Buyer's settlement statement to any selling firm (in addition to Buyer) prior to settlement so that Buyer, Seller, listing firm and selling firm shall have a reasonable opportunity

to review prior to Closing.

Buyer and Seller shall each have the right to request that title insurer(s), if any, issue closing protection, to indemnify against loss of closing funds because of acts of a Closing Agent, title insurer's named employee, or title insurance agent, Any cost for closing protection will be paid by the requesting party(ies).

Unless otherwise agreed by Buyer and Seller, transaction costs will be paid by the party indicated below.

Seller	Buyer
Title Examination or search fees	Recording fees
Premium for owner's title insurance policy	One-half of escrow fees
Preparation of conveyance documents	One-half of documentary stamps
One-half of escrow fees	Premium for extended coverage and endorsement to owner's title policy;
One-half of documentary stamps	Survey, if any
IRS Notification form	Other charges customarily paid by Buyer
Listing firm and Selling Firm	Lot Split for Parcel 18-09863-001
Commissions; if any	
Other charges customarily paid by Seller	

11. POSSESSION: Subject to the rights of the Seller to lease the City Maintenance Facilities as provided in the Lease, possession of the Property shall be delivered to Buyer at Closing.

12. ENVIRONMENTAL REPRESENTATION: Seller hereby represents and warrants to Buyer that to Seller's knowledge (unless otherwise disclosed herein):

- a. The Property is not the subject of any judicial or administrative notice or action relating to hazardous waste or environmental contamination;
- b. Seller has received no notice of any claim or violation of any law or regulation having to do with environmental protection;
- c. No adverse environmental condition of the Property exists; and
- d. No underground storage tanks exist or have existed on the Property

13. DUE DILIGENCE/CONTINGENCY: For the period from acceptance until forty-five (45) days after acceptance (the "Due Diligence Period") Buyer shall have the right, at Buyer's sole cost and expense, to enter upon the Property for the purposes of inspecting the Property and any fixtures or improvements located thereon and the physical condition thereof and for making such investigations and tests as shall be reasonably necessary for Buyer in its sole satisfaction to determine the suitability, feasibility and condition of the Property for Buyer's intended use thereof, including, but not limited to, obtaining or assuring itself as to the feasibility of obtaining approval for any zoning changes, lot splits, replat, curb cuts or other matters deemed desirable by the Buyer. Any inspection shall be conducted in a manner so as not to permanently or materially damage the Property and the fixtures and improvements located thereon. Buyer shall restore the Property to its condition prior to Buyer's inspection activities. Buyer

shall indemnify and hold Seller, and Seller's partners, employees, and agents, harmless from and against any and all liability, damage, loss, cost or expense (including reasonable attorneys' fees and costs) incurred or sustained by Seller or any of Seller's partners, employees, or agents by virtue of any activities of Buyer (or its agents, employees or contractors) in, about or concerning the Property. This indemnification and hold harmless agreement shall survive Closing or any termination of this Real Estate Contract. Buyer may, by written notice to Seller not later than 5:00 p.m. on the expiration date of the Due Diligence Period, terminate this Real Estate Contract for any reason or no reason at all whereupon the Earnest Money shall be returned to Buyer and neither party shall have any further right or remedy against the other except as provided herein. Except as otherwise provided herein, in the event that Buyer fails to deliver such termination notice prior to the expiration of the Due Diligence Period, this Real Estate Contract shall continue in full force and effect in accordance with its terms.

14. TERMITE CONTROL REQUIREMENTS: A Letter of Clearance (Wood Infestation Report) requiring a Termite Protection Contract with a One-Year (1) Warranty to include treatment if allowed by applicable law and the Arkansas State Plant Board and full protection plan shall be provided at Closing by Seller at Seller's cost for any improvements located at 607 SE D Street (Parcel No. 18-03587-001). Seller shall order a proposal from a licensed Termite Contractor within ten (10) business days after acceptance of this Real Estate Contract. All repairs necessary to allow issuance of such Termite Protection Contract, excluding a new Termite Protection Treatment, are to be at the cost of and the responsibility of Seller unless otherwise agreed.

15. BUYER'S DISCLAIMER OF RELIANCE:

BUYER CERTIFIES BUYER WILL PERSONALLY INSPECT OR HAVE A REPRESENTATIVE INSPECT THE PROPERTY AS FULLY AS DESIRED PRIOR TO CLOSING, BUYER CERTIFIES BUYER HAS NOT AND, EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, WILL NOT RELY ON ANY WARRANTIES, REPRESENTATIONS, OR STATEMENTS OF SELLER, LISTING FIRM, SELLING FIRM, OR ANY AGENT, INDEPENDENT CONTRACTOR, OR EMPLOYEE ASSOCIATED WITH THOSE ENTITIES, OR INFORMATION FROM MULTIPLE LISTING SERVICES OR OTHER WEBSITES REGARDING MINERAL RIGHTS, SIZE, QUALITY, VALUE OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ALL IMPROVEMENTS, APPLIANCES, PLUMBING, ELECTRICAL OR MECHANICAL SYSTEMS. HOWEVER, BUYER MAY RELY UPON ANY WRITTEN DISCLOSURES PROVIDED BY SELLER.

16. CONTINGENCIES; Buyer's offer to purchase and Seller's duty to sell the Property is expressly contingent upon Buyer's sole satisfaction of any contingencies contained herein within the deadline indicated for each contingency prior to Closing.

17. RISK OF LOSS: If prior to Closing of this transaction the improvements on the Property shall be destroyed or materially damaged by fire or other casualty, this Real Estate Contract, at the option of Buyer shall be null and void. If Buyer shall elect, in the event of such loss, that the Real Estate Contract shall be performed, Buyer shall be entitled to the proceeds of insurance, if any, applicable to the loss for use in repairing said loss.

Buyer shall have the right prior to Closing to inspect the Property to ascertain any damage that may have occurred due to fire, flood, hail, windstorm or other acts of nature, vandalism or theft.

18. GOVERNING LAW: This Real Estate Contract shall be governed by the laws of the State of Arkansas.

19. MERGER CLAUSE: This Real Estate Contract, when executed by both Buyer and Seller, shall contain the entire understanding and agreement between Buyer and Seller with respect to all matters referred to herein and shall supersede all prior or contemporaneous agreements, representations, discussions

and understandings, oral or written, with respect to such matters. This Real Estate Contract shall not supersede any agency agreements entered into by Buyer or Seller and any listing firm or selling firm.

20. ASSIGNMENT: This Real Estate Contract may be assigned by Buyer, however, Buyer will remain liable for responsibilities of Buyer upon any such assignment.

21. ACCEPTANCE: The term "acceptance" as used herein shall mean the later of the two dates on which this Real Estate Contract is signed by Seller or Buyer, as indicated by their signatures below, which later date shall be the date of final execution and agreement by the parties hereto. If any date or deadline provided for herein falls on Saturday, Sunday, or a holiday, the applicable date shall be the next business day.

22. TIME. Buyer and Seller agree time is of the essence with regard to all times and dates set forth in this Real Estate Contract. Further, all times and dates set forth in this Real Estate Contract refer to Arkansas Central time and date.

23. ATTORNEY'S FEES: Should Buyer or Seller initiate any type of administrative proceeding, arbitration, mediation or litigation against the other (or against an agent for the initiating party or agent for the non-initiating party), it is agreed by Buyer and Seller (aforementioned agents being third-party beneficiaries of this Paragraph 22) that all prevailing parties shall be entitled to an award of their respective costs and attorney's fees incurred in defense of such initiated action against the non-prevailing party.

24. COUNTERPARTS: This Real Estate Contract may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

25. FIRPTA COMPLIANCE, TAX REPORTING: Buyer and Seller agree to disclose on or before Closing, to the person or company acting as Closing Agent for this transaction, their United States citizenship status, solely for the purpose of compliance with the Foreign Investment in Real Property Taxation Act (FIRPTA). In addition, Buyer and Seller shall execute all documents required by such Closing Agent to document compliance with the FIRPTA and all other applicable laws. Buyer and Seller agree that nothing in this Real Estate Contract is intended to limit the responsibility of the Closing Agent as defined pursuant to United States Treasury Regulation 1.6045-4) to (i) be the "reporting person" under state and federal tax laws (including without limitation 26 USC Section 6045(e)), and (ii) file all necessary forms regarding the Closing, including without limitation form 1099, 8288 or 8288A. By accepting the role as Closing Agent, this Agreement shall obligate the Closing Agent to fulfill their responsibilities as set forth above and as defined by the above statutes, Seller will execute an affidavit confirming compliance with FIRPTA, as prepared by the Closing Agent.

26. EXPIRATION: This Real Estate Contract expires if not accepted in writing by Seller on or before (month) _____ (day) _____ (year) 2014, at 5:00 (a.m.) (p.m.).

The above Real Estate Contract is executed by Buyer on
(month) _____ (day) _____, (year) _____, at _____ (a.m.)(p.m.)

BUYER: Affordable Arkansas Homes, LLC

Signature: _____

Printed Name: _____

Title: _____

The above Real Estate Contract is executed by Seller on
(month) _____ (day) _____, (year) _____, at _____ (a.m.)(p.m.)

SELLER: City of Bentonville, Arkansas

Signature: _____

Printed Name: _____

Title: _____

This above offer was ____ rejected ____ counteroffered on (month) _____ (day) _____, (year) _____, at _____ (a.m.)(p.m.)

Seller's Signature _____

EXHIBIT "A"

That property generally referred to as the following (final legal description to be provided by Seller and agreed to by Buyer prior to the Closing):

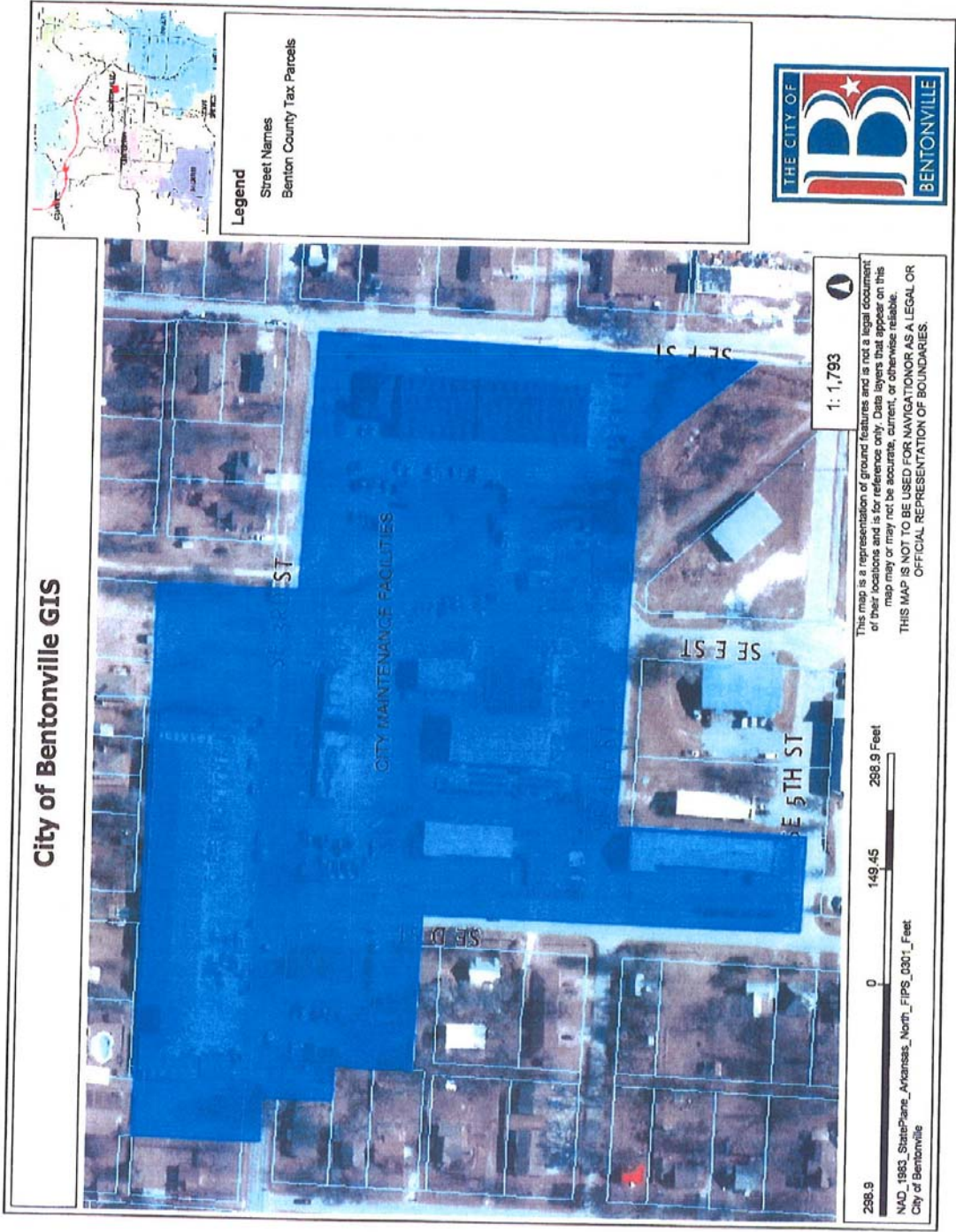
City Maintenance Facilities approximately 9.89 acres including Parcel Nos.:
01-05137-000
01-10855-000
01-03587-001
01-01168-000
01-01169-000
01-01170-000
01-01171-000
01-01172-000

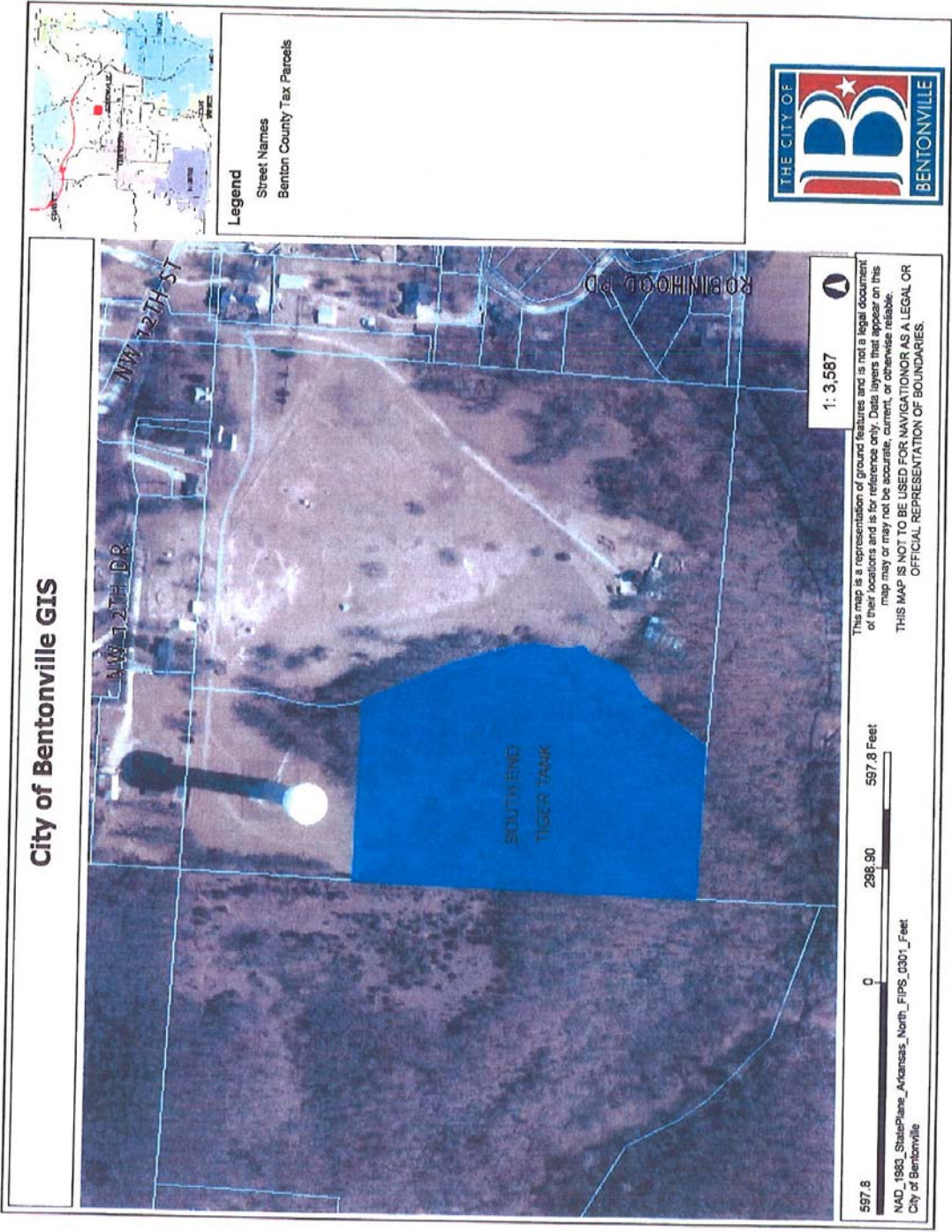
Head Start Land approximately 1.5 acres Parcel No. 01-08237-000

Lots 1, 2 and 3 Price Coffee Addition approx. 142 acres; Parcel Nos. 01-00206-550 & 01-16859-000

South End of Tiger Tank Lot ~ 9.5 acres a portion of Parcel No. 18-09863-001

See also aerial photographs attached hereto.





City of Bentonville GIS



1:7,174

This map is a representation of ground features and is not a legal document. of their locations and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION OR AS A LEGAL OR OFFICIAL REPRESENTATION OF BOUNDARIES.

1,195.6 0 597.80 1,195.6 Feet

NAD_1983_StatePlane_Arkansas_North_FIPS_0301_Feet
City of Bentonville

- Legend**
- Street Names
 - Lot Numbers
 - Block Numbers
 - Lot Lines
 - Subdivision Boundary

Benton County Tax Parcels





EXHIBIT "B"

LEASE AGREEMENT

This Lease Agreement is entered into by and between Affordable Arkansas Homes, LLC ("Landlord"), and the City of Bentonville, Arkansas ("Tenant") effective the ____ day of _____, 2014.

In consideration of the mutual covenants and agreements of this Lease Agreement ("the lease"), and other good and valuable consideration, Landlord demises and leases to Tenant, and Tenant leases from Landlord, the premises described in Exhibit "D," which is attached to and incorporated into this lease, and are referred to in this lease as "the premises" or "the leased premises."

ARTICLE I TERM

1.01. Term of Lease. The term of this lease shall be from the date hereof and shall end on the following dates for the respective portions of the premises:

≈ 2.3 acres North of SE 3rd Street on or before December 31, 2016

≈ 0.64 acres West of SE D Street on or before December 31, 2016

≈ 0.57 acres at 401 SE D Street on or before December 31, 2016

Remainder on or before March 1, 2019

Tenant may terminate this Lease prior to the above date as to any portion of the premises described above in this Article upon 30 days prior notice to Landlord. Upon termination of this lease as to any portion of the premises described above in this Article, this lease shall remain in effect for the remaining portion(s) of the premises and the term "premises" or "leased premises" shall mean such remaining portions.

1.02. Holdover. Tenant shall not be permitted to holdover and continue possession of any portion of the premises after the initial term stated in this Article has expired for such portion.

ARTICLE 2 RENT

2.01. Fixed Rent. Tenant will pay Landlord as rent for the leased premises for the terms described in Article 1 the sum of \$1.00 due on or before the date hereof.

2.02. Taxes and Assessments. (a) Landlord shall be responsible for all real-property taxes, special assessments, and governmental charges of any kind imposed on the premises during the lease term.

(b) Landlord may, at its own expense, contest any tax or assessment for which it is responsible under § 2.02(a).

ARTICLE 3 USE OF PREMISES

3.01. Tenant's Warranty Regarding Use. Tenant represents and warrants to Landlord that Tenant intends to use the premises as a maintenance facility for the Tenant. Tenant's use of the property is restricted to those purposes specified in this section unless Tenant obtains Landlord's prior written consent to any change in use.

3.02. Compliance with Laws. Tenant may not use, or permit using, the premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the premises, including any laws dealing with health, safety and the environment.

3.03. Rights of Inspection. Tenant must permit Landlord and Landlord's agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purpose of (i) showing prospective buyer or tenants the premises, and (ii) conducting inspections and environmental sampling, including analysis of the premises for prospective buyers, tenants or Landlord. Such inspections and sampling shall be during regular business hours, and during other hours either by agreement of the parties or in the event of an emergency. Tenant may not unreasonably restrict access to any part of the premises. If Landlord's environmental inspection includes sampling and testing of the premises, Landlord must use its best efforts to avoid interfering with Tenant's use of the premises, and on completion of sampling and testing must repair and restore the affected areas of the premises as made necessary by any sampling and testing. Landlord shall be permitted to install "For Sale" or "For Lease" signs on the premises.

3.04. Environmental Matters. (a) For purposes of this lease, the following definitions shall apply: "Hazardous Material(s)" shall mean any toxic or hazardous substance, waste, material, pollutant, contaminant or infectious waste, or any matter that in certain specified quantities would be injurious to the public health or welfare, in words of similar import, in any of the "Environmental Laws," as that term is defined below. "Environmental Laws" shall mean any and all federal, state, local, or quasi-governmental laws, ordinances, codes, rulings, regulations or guidance now or hereafter enacted and as amended from time to time, in any way relating to (i) the protection of the environment, the health and safety of persons (including employees), property or the public welfare from actual or potential release, discharge, escape or emission (whether past or present) of any Hazardous Materials or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials

(b) Tenant shall not use or store in or around the premises any Hazardous Materials, except if stored, properly packaged and labeled, disposed of and/or used in accordance with applicable Environmental Laws. In addition, Tenant agrees that it: (i) shall not cause nor permit any Hazardous Materials to be generated, brought onto, used, stored or disposed of in or about the premises except for such substances that are required in the ordinary course of Tenant's business as permitted in this lease; (ii) shall not engage in activities at the premises that could result in the imposition of liability upon Tenant or Landlord; (iii) shall notify Landlord promptly following receipt of any knowledge with respect to any actual release or discharge (whether past or present) of any Hazardous Materials on or around the premises; and (iv) shall promptly forward

to Landlord copies of all orders, notices, permits, applications and other communications and reports in connection with any Hazardous Materials and any environmental matters, including, any release or discharge of any Hazardous Materials on or around the premises.

ARTICLE 4 REPAIRS AND MAINTENANCE

4.01. Repairs and Maintenance by Tenant. Tenant will, throughout the lease term, at its own expense and risk, repair, replace and maintain the premises and all improvements on them in the same condition as they exist on the date hereof, including the foundation, roof, HVAC systems, plumbing and electrical. All maintenance, repairs, and replacements required by this section must be performed promptly when required and so as not to cause depreciation in the value of the premises.

4.02. Tenant's Failure to Repair or Maintain. If Tenant fails to perform its obligation to repair, replace, or maintain, as set forth in § 4.01 above, within a reasonable time after notice from Landlord of the need for the repair, re-placement, or maintenance, Landlord may enter the premises and make the repairs or re-placements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. On Landlord's notice to Tenant of the performance and cost of any maintenance, repairs, or replacements under this section, Tenant must immediately reimburse Landlord for any reasonable costs incurred by Landlord under this section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Tenant to Landlord.

ARTICLE 5 UTILITIES, GARBAGE REMOVAL, PEST CONTROL AND JANITORIAL

5.01. Utility Charges. Tenant will pay all utility charges for water, electricity, heat, gas, telephone and internet service used in and about the premises during the lease term. Tenant will pay the charges directly to the utility company or municipally furnishing the service before the charges are delinquent.

5.02. Garbage Removal. Tenant will pay for all garbage removal from the premises during the lease term.

5.03. Pest Control. Tenant, at its expense, shall be responsible for all pest control services and shall maintain a termite control policy issued by a licensed operator.

5.04. Janitorial. Tenant, at its expense, shall be responsible for any and all janitorial and grounds keeping services for the premises.

ARTICLE 6 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

6.01. Consent of Landlord. Tenant may not make any alterations, additions, or improvements to the premises without Landlord's prior written consent. Landlord may not unreasonably withhold consent for nonstructural alterations, additions, or improvements.

6.02. Property of Landlord. All alterations, additions, or improvements made by Tenant will become Landlord's property when this lease terminates, but Landlord may require that Tenant remove any alterations, additions, and improvements installed or made by Tenant, and any other property Tenant placed on the premises, when the lease terminates. If Landlord requires Tenant to remove the alterations, additions, or improvements, Tenant must repair any damage to the premises caused by the removal.

6.03. Alterations Required by Accessibility Laws. If any alterations, additions, or improvements to the premises are mandated by legal requirements related to accessibility by persons with disabilities ("accessibility alterations"), Tenant is responsible for making them. This allocation of responsibility for compliance with such legal requirements is a material inducement for the parties to enter this lease.

ARTICLE 7 TRADE FIXTURES AND SIGNS

7.01. Trade Fixtures. Tenant may, at all times, erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the premises, if Tenant complies with all applicable governmental laws, ordinances, and regulations regarding the fixtures. Tenant may remove all trade fixtures installed by Tenant after the date hereof when this lease terminates, if Tenant is not in default under the lease and the fixtures can be removed without structural damage to the building. Tenant must repair any damage to the premises caused by removing trade fixtures, and all the repairs must be completed before the lease terminates. Any trade fixtures not removed by Tenant when this lease terminates are considered abandoned by Tenant and will automatically become Landlord's property. If any trade fixture installed by Tenant is abandoned when the lease terminates, and Landlord desires to remove such trade fixture, Tenant must pay Landlord any reasonable expense incurred by Landlord to remove the fixture from the premises and repair and damage caused by such removal.

7.02. Signs. Tenant may maintain the current signage on the premises, subject to applicable laws, ordinances, and regulations. Tenant must remove all signs when this lease terminates and repair any damage resulting from erecting or removing the signs.

ARTICLE 8 MECHANIC'S LIENS

Tenant will not permit any mechanic's lien or liens to be placed upon the premises or improvements on the premises. Tenant will promptly pay any mechanic's lien that is filed on the premises or on improvements located on the premises. If default in payment of the lien continues for 15 days after Landlord's written notice to Tenant, Landlord may, at its option, pay the lien or

any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the premises or improvements on them, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice. Landlord's interest in the premises is not subject to mechanics' liens for improvements made, or contracted for, by Tenant. Tenant must give written notification to all contractors making any improvements on the premises of this lease provision.

ARTICLE 9 INSURANCE AND INDEMNITY

9.01. Fire Insurance. Tenant must, at its own expense during the lease term, keep all buildings and improvements on the premises insured against loss or damage by fire or theft, with extended coverage to include direct loss by windstorm, hail, explosion, riot or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, in the total amounts of not less than the full replacement value of the buildings and improvements. The insurance is to be carried by one or more insurance companies licensed to do business in Arkansas and approved by Landlord. The insurance policy or policies must name both Landlord and Tenant as insureds. The policies must provide that any proceeds for loss or damage to buildings or to improvements are payable solely to Landlord.

9.02. Liability Insurance. Tenant, at its own expense, must provide and maintain in force during the lease term, liability insurance in the minimum amount of \$2,000,000. The policy must cover Landlord as well as Tenant, for any liability for property damage or personal injury arising from Tenant's occupying or Landlord's owning the premises. This insurance is to be carried by one or more insurance companies authorized to transact business in Arkansas and approved by Landlord.

9.03. Remedy for Failure to Provide Insurance. Tenant must furnish Landlord with certificates of all insurance required by this article. If Tenant does not provide the certificates or within 15 days after obtaining possession, or if Tenant allows any insurance required under this article to lapse, Landlord may, at its option, take out and pay the premiums on the necessary insurance to comply with Tenant's obligations under this article. Landlord is entitled to reimbursement from Tenant for all amounts spent to procure and maintain the insurance.

9.04. Tenant's Indemnity. Tenant must indemnify and hold Landlord harmless against any claims, demands, damages, costs, and expenses, including reasonable attorney's fees for defending claims and demands, arising from the conduct or management of Tenant's activities on the premises or its use of them; from any breach by Tenant of any conditions of this lease; or from any act or negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord. This section survives the expiration or earlier termination of this lease.

ARTICLE 10 DAMAGE OR DESTRUCTION

10.01. Notice to Landlord. If the premises, or any structures or improvements on them, are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a description of the damage and, as far as known to Tenant, the cause of the damage.

10.02. Total Destruction. If the building on the premises is totally destroyed by fire, tornado, or other casualty not the fault of Tenant or any person in or about the premises with Tenant's express or implied consent, or if it is so damaged that rebuilding or repairs cannot reasonably be completed within 30 days at a reasonable cost, this lease will terminate, and rent will be abated for the unexpired portion of this lease, effective as of the date of written notification as provided in § 10.01.

10.03. Partial Destruction. If the building or other improvements on the premises are damaged by fire, tornado, or other casualty but not to such an extent that rebuilding or repairs cannot reasonably be completed within 30 days at a reasonable cost this lease will not terminate and Landlord will proceed to effectuate the repair, but only to the extent insurance coverage is available under Section 9.01 with Tenant being responsible for any deductibles.

ARTICLE 11 CONDEMNATION

11.01. Total Condemnation. If, during the lease term or any extension or renewal of it, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this lease will terminate, and the rent will be abated during the unexpired portion of this lease, effective as of the date the condemning authority takes the premises.

11.02. Partial Condemnation. (a) If less than all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation takes possession of the condemned portion.

(b) If the premises are partially condemned and Tenant fails to exercise the option to terminate the lease under this section, this lease will not terminate, but Tenant may, at its sole expense, restore and reconstruct the building and other improvements situated on the premises to make them reasonably tenantable and suitable for the uses for which the premises are leased.

11.03. Condemnation Award. Landlord and Tenant are each entitled to receive and retain such separate awards and portions of lump-sum awards as are allocated to their respective interests in any condemnation proceedings. The termination of this lease will not affect the rights of the respective parties to the awards.

ARTICLE 12 DEFAULT

12.01. Tenant's Default. If Tenant allows the rent to be in arrears more than 15 days after written notice of the delinquency, or remains in default under any other condition of this lease for 15 days after written notice from Landlord, Landlord may, at its option, without notice to Tenant, terminate this lease, or, in the alternative, Landlord may reenter and take possession of the premises and remove all persons and property without being considered guilty of any manner of trespass and may relet the premises (or any part of them) for all or any part of the remainder of the lease term, to a party satisfactory to Landlord.

12.02. Cumulative Remedies. All Landlord's rights and remedies under this Article are cumulative, and none will exclude any other right or remedy provided by law or any other provision of this lease. All the rights and remedies may be exercised and enforced concurrently and whenever occasion for their exercise arises.

12.03. Waiver of Breach. Any waiver by Landlord or Tenant of a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach.

ARTICLE 13 INSPECTION BY LANDLORD

Tenant will permit Landlord and its agents, representatives, and employees to enter the premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Landlord's interest in the premises or to perform Landlord's duties under this lease.

ARTICLE 14 ASSIGNMENT AND LEASE

14.01. Assignment by Tenant. Tenant may not sublet, assign, encumber, or otherwise transfer this lease or any right or interest in it or in the premises or the improvements on them, without Landlord's written consent which Tenant acknowledges due to the nature and reason for this lease may be withheld or granted in Landlord's sole and absolute discretion. If Tenant sublets, assigns, encumbers, or otherwise transfers its rights or interests in this lease or in the premises or the improvements on them without Landlord's written consent, Landlord may, at its option, declare this lease terminated. If Landlord consents in writing to an assignment, sublease, or other transfer of all or any of Tenant's rights under this lease, the as-signee or subtenant must assume all of Tenant's obligations under this lease, and Tenant will remain liable for every obligation under the lease.

14.02. Assignment by Landlord. Landlord may assign or transfer any of its interests under this lease at any time without the consent of Tenant.

ARTICLE 15 MISCELLANEOUS

15.01 (a) All notices required under this lease must be given by certified or registered mail, addressed to the proper party, at the following addresses:

Landlord: Arkansas Affordable Homes LLC
P.O. Box 1860
Bentonville, AR 72712

Tenant: Camille Thompson
City of Bentonville
117 West Central Avenue
Bentonville, AR 72712

(b) Either party may change the address to which notices are to be sent by sending written notice of the new address to the other party in accordance with of this section.

15.02. Parties Bound. This lease binds and inures to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this lease permits.

15.03. Choice of Law. This lease is to be construed under Arkansas law, and all obligations of the parties created by this lease are performable in Benton County, Arkansas.

15.04. Legal Construction. If one or more of the provisions contained in this Lease are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the lease, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

15.05. Prior Agreements Superseded. This lease constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

15.06. Amendment. No amendment, modification, or alteration of this lease is binding unless in writing, dated subsequent to the date of this lease, and duly executed by the parties.

15.05. Rights and Remedies Cumulative. The rights and remedies provided by this lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15.08. Attorney's Fees and Costs. If, as a result of either party's breaching this lease, the other party employs an attorney or attorneys to enforce its rights under this lease, then the breaching or

defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

15.09. Force Majeure. Neither Landlord nor Tenant is required to perform any term or covenant in this lease so long as performance is delayed or prevented by force majeure, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, hurricanes, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant cannot, by exercising due diligence, prevent or overcome, in whole or part.

15.10. Time of Essence. Time is of the essence of this lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this lease to be executed by their duly authorized representatives effective the day and date first written above.

LANDLORD

AFFORDABLE ARKANSAS HOMES, LLC

By: _____

Name: _____

Title: _____

TENANT

CITY OF BENTONVILLE, ARKANSAS

By: _____

Name: _____

Title: _____

**EXHIBIT C
FIXTURES AND ATTACHMENTS**

Inventory Warehouse

- All office furniture
- Racks - inside and outside
- Wire scale
- EPA containment tank for leaking transformers
- Fork lifts
- Generators (3)

Electric

- All office furniture
- Air compressors and attachments (2)
- Welders and attachments
- Drill press
- Lockers
- Used oil container
- Label making table
- Ice machine

Street

- All office furniture
- Generator (2 - 1 at Water/Street, 1 at Sign and Signal Shop)
- Shelving and rack system for sign and signal shop
- Icemaker

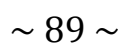
Water

- All office furniture
- Vehicle Lift
- Air compressors and attachments (2)
- 2 pressure washers
- Meter test bench and associated equipment
- Metal shelving
- Metal safety cabinets
- Metal rack
- Work benches
- Ice machine

Head Start

- Playground equipment and accessories north and northeast of building
- Head Start shelving and materials, office equipment and furniture
- Playground equipment east of building

Parcel Numbers
01-05137-000
01-10855-000
01-03587-001
01-01168-000
01-01169-000
01-01170-000
01-01171-000
01-01172-000



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR
AND CITY CLERK TO ENTER INTO AN OFFER
AND ACCEPTANCE FOR THE SALE OF REAL
PROPERTY TO AFFORDABLE ARKANSAS
HOMES, LLC**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an Offer and Acceptance for the Sale of Real Property to Affordable Arkansas Homes, LLC as set forth in the Real Estate Contract attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY	
Bid Award	Bid #
Budget Adjustment	
Change Order	
Informational	
Ordinance	
X Resolution	
Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Mike Bender

Department: Public Works Director

Phone: 271-6720

ACTION REQUIRED:

Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a lease agreement with Affordable Arkansas Homes, LLC for the lease of City Maintenance Facilities Campus (9.89 acres on SE 3rd Street). See attached memo and lease agreement.

COST TO CITY:

Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

MMB 7/10/14
Department Head Date

Purchasing Agent Date

TD 7/11/14
Finance Director Date

CT 7/11/14
Staff Attorney Date

PAM 7/16/14
Mayor Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender 

CC:

Date: July 10, 2014

Re: Sale of City Facilities, Purchase of Rose Property and Associated Budget Adjustment, Lease Agreement for City Facilities

This memo covers Four Council agenda items – 1) Real Estate Contract with Affordable Arkansas Homes, LLC for the Sale of City Facilities, 2) Real Estate Contract with Rose Properties, LLC for Purchase of 37 acres on Airport Road, 3) associated budget adjustment, and 4) Lease Agreement with Affordable Arkansas Homes, LLC.

Over the last couple of years there have been several discussions regarding the relocation of the City's SE 3rd Street complex which includes the Street Department, Water Utilities Department, Electric Department and Inventory Warehouse. Several options have been presented to Council including relocation of the Street Department to Melissa Drive and construction of a new Water Admin Building and enclosing Town Branch Creek at the existing SE 3rd Street location to facilitate growth needs of the City utilities departments. Staff has continued to pursue all options in hopes the best solution for the City as a whole is selected and developed. I believe the proposal presented herein is the best opportunity to relocate City facilities from the SE 3rd Street campus to provide for a centrally located, shared complex that allows for growth/expansion of all affected departments.

Staff is proposing to sell the SE 3rd Street Facilities along with other properties to bring in revenue to support relocation and purchase 37 acres located on the south side of Airport Road immediately east of the City Airport for construction of a new, combined facility. The attached agreements reflect the sale of the City Facilities to Affordable Arkansas Homes, LLC for \$7,000,000.00 along with a lease agreement for the SE 3rd Street Facilities to allow the City time to develop a Master Plan for the Rose property and construction of the initial development. The City will receive the \$7,000,000.00 at the time of closing. The City will then lease the property back for \$1 per year. The lease agreement has the timeline for vacating the premises which allows 2 years for the Water and Street portions and 4 ½ years for the remaining portions. Development of the property will include a master plan for overall development of the property followed by plans for immediate development. A consultant contract will be brought back to Council

after staff has advertised and selected a consultant. Money from the sale of the City facilities will cover the \$5,200,000.00 purchase cost of the 37 acres on Airport Road. The 37 acres consists of 18 acres zoned Industrial and 19 acres zoned C-2 Commercial.

Development will be funded by utilizing money already budgeted for relocation or expansions. If you recall, Street has approximately \$5,000,000.00 earmarked for relocating their facilities, Water Department budgeted \$1,500,000.00 for construction of a new administration building this year, and Electric identified \$1,500,000.00 for enclosing Town Branch Creek this year to expand storage and parking. This yields \$8,000,000.00 available for development. The sale of City facilities will leave \$1,800,000.00 for the project. There is also \$3,500,000.00 available in reserves for this project yielding a total of \$13,300,000.00 available immediately for this project. In addition, all departments could budget additional money in the 2015 budget as we move into the design phase and better understand costs. Once a Master Plan is complete, it will be presented to Council along with anticipated costs. Contracts and budget adjustments, as needed, will also be presented to Council as the project progresses.

The four properties to be sold in this agreement include all City facilities in the SE 3rd Street Campus (just under 10 acres), the Head Start Facility (1.5 acres), Price Coffee Property (142 acres), and 9.5 acres from the south end of the Tiger Tank Property. Maps illustrating the extent of the properties are also attached.

Thank you for your consideration of this request

EXHIBIT "B"

LEASE AGREEMENT

This Lease Agreement is entered into by and between Affordable Arkansas Homes, LLC ("Landlord"), and the City of Bentonville, Arkansas ("Tenant") effective the ____ day of _____, 2014.

In consideration of the mutual covenants and agreements of this Lease Agreement ("the lease"), and other good and valuable consideration, Landlord demises and leases to Tenant, and Tenant leases from Landlord, the premises described in Exhibit "D," which is attached to and incorporated into this lease, and are referred to in this lease as "the premises" or "the leased premises."

ARTICLE I TERM

1.01. Term of Lease. The term of this lease shall be from the date hereof and shall end on the following dates for the respective portions of the premises:

≈ 2.3 acres North of SE 3rd Street on or before December 31, 2016

≈ 0.64 acres West of SE D Street on or before December 31, 2016

≈ 0.57 acres at 401 SE D Street on or before December 31, 2016

Remainder on or before March 1, 2019

Tenant may terminate this Lease prior to the above date as to any portion of the premises described above in this Article upon 30 days prior notice to Landlord. Upon termination of this lease as to any portion of the premises described above in this Article, this lease shall remain in effect for the remaining portion(s) of the premises and the term "premises" or "leased premises" shall mean such remaining portions.

1.02. Holdover. Tenant shall not be permitted to holdover and continue possession of any portion of the premises after the initial term stated in this Article has expired for such portion.

ARTICLE 2 RENT

2.01. Fixed Rent. Tenant will pay Landlord as rent for the leased premises for the terms described in Article 1 the sum of \$1.00 due on or before the date hereof.

2.02. Taxes and Assessments. (a) Landlord shall be responsible for all real-property taxes, special assessments, and governmental charges of any kind imposed on the premises during the lease term.

(b) Landlord may, at its own expense, contest any tax or assessment for which it is responsible under § 2.02(a).

ARTICLE 3 USE OF PREMISES

- 3.01. Tenant's Warranty Regarding Use. Tenant represents and warrants to Landlord that Tenant intends to use the premises as a maintenance facility for the Tenant. Tenant's use of the property is restricted to those purposes specified in this section unless Tenant obtains Landlord's prior written consent to any change in use.
- 3.02. Compliance with Laws. Tenant may not use, or permit using, the premises in any manner that results in waste of premises or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the premises, including any laws dealing with health, safety and the environment.
- 3.03. Rights of Inspection. Tenant must permit Landlord and Landlord's agents, servants, and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purpose of (i) showing prospective buyer or tenants the premises, and (ii) conducting inspections and environmental sampling, including analysis of the premises for prospective buyers, tenants or Landlord. Such inspections and sampling shall be during regular business hours, and during other hours either by agreement of the parties or in the event of an emergency. Tenant may not unreasonably restrict access to any part of the premises. If Landlord's environmental inspection includes sampling and testing of the premises, Landlord must use its best efforts to avoid interfering with Tenant's use of the premises, and on completion of sampling and testing must repair and restore the affected areas of the premises as made necessary by any sampling and testing. Landlord shall be permitted to install "For Sale" or "For Lease" signs on the premises.
- 3.04. Environmental Matters. (a) For purposes of this lease, the following definitions shall apply: "Hazardous Material(s)" shall mean any toxic or hazardous substance, waste, material, pollutant, contaminant or infectious waste, or any matter that in certain specified quantities would be injurious to the public health or welfare, in words of similar import, in any of the "Environmental Laws," as that term is defined below. "Environmental Laws" shall mean any and all federal, state, local, or quasi-governmental laws, ordinances, codes, rulings, regulations or guidance now or hereafter enacted and as amended from time to time, in any way relating to (i) the protection of the environment, the health and safety of persons (including employees), property or the public welfare from actual or potential release, discharge, escape or emission (whether past or present) of any Hazardous Materials or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Materials
- (b) Tenant shall not use or store in or around the premises any Hazardous Materials, except if stored, properly packaged and labeled, disposed of and/or used in accordance with applicable Environmental Laws. In addition, Tenant agrees that it: (i) shall not cause nor permit any Hazardous Materials to be generated, brought onto, used, stored or disposed of in or about the premises except for such substances that are required in the ordinary course of Tenant's business as permitted in this lease; (ii) shall not engage in activities at the premises that could result in the imposition of liability upon Tenant or Landlord; (iii) shall notify Landlord promptly following receipt of any knowledge with respect to any actual release or discharge (whether past or present) of any Hazardous Materials on or around the premises; and (iv) shall promptly forward

to Landlord copies of all orders, notices, permits, applications and other communications and reports in connection with any Hazardous Materials and any environmental matters, including, any release or discharge of any Hazardous Materials on or around the premises.

ARTICLE 4 REPAIRS AND MAINTENANCE

4.01 Repairs and Maintenance by Tenant. Tenant will, throughout the lease term, at its own expense and risk, repair, replace and maintain the premises and all improvements on them in the same condition as they exist on the date hereof, including the foundation, roof, HVAC systems, plumbing and electrical. All maintenance, repairs, and replacements required by this section must be performed promptly when required and so as not to cause depreciation in the value of the premises.

4.02. Tenant's Failure to Repair or Maintain. If Tenant fails to perform its obligation to repair, replace, or maintain, as set forth in § 4.01 above, within a reasonable time after notice from Landlord of the need for the repair, re-placement, or maintenance, Landlord may enter the premises and make the repairs or re-placements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. On Landlord's notice to Tenant of the performance and cost of any maintenance, repairs, or replacements under this section, Tenant must immediately reimburse Landlord for any reasonable costs incurred by Landlord under this section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Tenant to Landlord.

ARTICLE 5 UTILITIES, GARBAGE REMOVAL, PEST CONTROL AND JANITORIAL

5.01. Utility Charges. Tenant will pay all utility charges for water, electricity, heat, gas, telephone and internet service used in and about the premises during the lease term. Tenant will pay the charges directly to the utility company or municipally furnishing the service before the charges are delinquent.

5.02. Garbage Removal. Tenant will pay for all garbage removal from the premises during the lease term.

5.03. Pest Control. Tenant, at its expense, shall be responsible for all pest control services and shall maintain a termite control policy issued by a licensed operator.

5.04. Janitorial. Tenant, at its expense, shall be responsible for any and all janitorial and grounds keeping services for the premises.

ARTICLE 6 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

6.01. Consent of Landlord. Tenant may not make any alterations, additions, or improvements to the premises without Landlord's prior written consent. Landlord may not unreasonably withhold consent for nonstructural alterations, additions, or improvements.

6.02. Property of Landlord. All alterations, additions, or improvements made by Tenant will become Landlord's property when this lease terminates, but Landlord may require that Tenant remove any alterations, additions, and improvements installed or made by Tenant, and any other property Tenant placed on the premises, when the lease terminates. If Landlord requires Tenant to remove the alterations, additions, or improvements, Tenant must repair any damage to the premises caused by the removal.

6.03. Alterations Required by Accessibility Laws. If any alterations, additions, or improvements to the premises are mandated by legal requirements related to accessibility by persons with disabilities ("accessibility alterations"), Tenant is responsible for making them. This allocation of responsibility for compliance with such legal requirements is a material inducement for the parties to enter this lease.

ARTICLE 7 TRADE FIXTURES AND SIGNS

7.01. Trade Fixtures. Tenant may, at all times, erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the premises, if Tenant complies with all applicable governmental laws, ordinances, and regulations regarding the fixtures. Tenant may remove all trade fixtures installed by Tenant after the date hereof when this lease terminates, if Tenant is not in default under the lease and the fixtures can be removed without structural damage to the building. Tenant must repair any damage to the premises caused by removing trade fixtures, and all the repairs must be completed before the lease terminates. Any trade fixtures not removed by Tenant when this lease terminates are considered abandoned by Tenant and will automatically become Landlord's property. If any trade fixture installed by Tenant is abandoned when the lease terminates, and Landlord desires to remove such trade fixture, Tenant must pay Landlord any reasonable expense incurred by Landlord to remove the fixture from the premises and repair and damage caused by such removal.

7.02. Signs. Tenant may maintain the current signage on the premises, subject to applicable laws, ordinances, and regulations. Tenant must remove all signs when this lease terminates and repair any damage resulting from erecting or removing the signs.

ARTICLE 8 MECHANIC'S LIENS

Tenant will not permit any mechanic's lien or liens to be placed upon the premises or improvements on the premises. Tenant will promptly pay any mechanic's lien that is filed on the premises or on improvements located on the premises. If default in payment of the lien continues for 15 days after Landlord's written notice to Tenant, Landlord may, at its option, pay the lien or

any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the premises or improvements on them, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice. Landlord's interest in the premises is not subject to mechanics' liens for improvements made, or contracted for, by Tenant. Tenant must give written notification to all contractors making any improvements on the premises of this lease provision.

ARTICLE 9 INSURANCE AND INDEMNITY

9.01. Fire Insurance. Tenant must, at its own expense during the lease term, keep all buildings and improvements on the premises insured against loss or damage by fire or theft, with extended coverage to include direct loss by windstorm, hail, explosion, riot or riot attending a strike, civil commotion, aircraft, vehicles, and smoke, in the total amounts of not less than the full replacement value of the buildings and improvements. The insurance is to be carried by one or more insurance companies licensed to do business in Arkansas and approved by Landlord. The insurance policy or policies must name both Landlord and Tenant as insureds. The policies must provide that any proceeds for loss or damage to buildings or to improvements are payable solely to Landlord.

9.02. Liability Insurance. Tenant, at its own expense, must provide and maintain in force during the lease term, liability insurance in the minimum amount of \$2,000,000. The policy must cover Landlord as well as Tenant, for any liability for property damage or personal injury arising from Tenant's occupying or Landlord's owning the premises. This insurance is to be carried by one or more insurance companies authorized to transact business in Arkansas and approved by Landlord.

9.03. Remedy for Failure to Provide Insurance. Tenant must furnish Landlord with certificates of all insurance required by this article. If Tenant does not provide the certificates or within 15 days after obtaining possession, or if Tenant allows any insurance required under this article to lapse, Landlord may, at its option, take out and pay the premiums on the necessary insurance to comply with Tenant's obligations under this article. Landlord is entitled to reimbursement from Tenant for all amounts spent to procure and maintain the insurance.

9.04. Tenant's Indemnity. Tenant must indemnify and hold Landlord harmless against any claims, demands, damages, costs, and expenses, including reasonable attorney's fees for defending claims and demands, arising from the conduct or management of Tenant's activities on the premises or its use of them; from any breach by Tenant of any conditions of this lease; or from any act or negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord. This section survives the expiration or earlier termination of this lease.

ARTICLE 10 DAMAGE OR DESTRUCTION

10.01. Notice to Landlord. If the premises, or any structures or improvements on them, are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a description of the damage and, as far as known to Tenant, the cause of the damage.

10.02. Total Destruction. If the building on the premises is totally destroyed by fire, tornado, or other casualty not the fault of Tenant or any person in or about the premises with Tenant's express or implied consent, or if it is so damaged that rebuilding or repairs cannot reasonably be completed within 30 days at a reasonable cost, this lease will terminate, and rent will be abated for the unexpired portion of this lease, effective as of the date of written notification as provided in § 10.01.

10.03. Partial Destruction. If the building or other improvements on the premises are damaged by fire, tornado, or other casualty but not to such an extent that rebuilding or repairs cannot reasonably be completed within 30 days at a reasonable cost this lease will not terminate and Landlord will proceed to effectuate the repair, but only to the extent insurance coverage is available under Section 9.01 with Tenant being responsible for any deductibles.

ARTICLE 11 CONDEMNATION

11.01. Total Condemnation. If, during the lease term or any extension or renewal of it, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this lease will terminate, and the rent will be abated during the unexpired portion of this lease, effective as of the date the condemning authority takes the premises.

11.02. Partial Condemnation. (a) If less than all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant may terminate the lease by giving Landlord written notice within 30 days after the entity exercising the power of condemnation takes possession of the condemned portion.

(b) If the premises are partially condemned and Tenant fails to exercise the option to terminate the lease under this section, this lease will not terminate, but Tenant may, at its sole expense, restore and reconstruct the building and other improvements situated on the premises to make them reasonably tenantable and suitable for the uses for which the premises are leased.

11.03. Condemnation Award. Landlord and Tenant are each entitled to receive and retain such separate awards and portions of lump-sum awards as are allocated to their respective interests in any condemnation proceedings. The termination of this lease will not affect the rights of the respective parties to the awards.

ARTICLE 12 DEFAULT

12.01. Tenant's Default. If Tenant allows the rent to be in arrears more than 15 days after written notice of the delinquency, or remains in default under any other condition of this lease for 15 days after written notice from Landlord, Landlord may, at its option, without notice to Tenant, terminate this lease, or, in the alternative, Landlord may reenter and take possession of the premises and remove all persons and property without being considered guilty of any manner of trespass and may relet the premises (or any part of them) for all or any part of the remainder of the lease term, to a party satisfactory to Landlord.

12.02. Cumulative Remedies. All Landlord's rights and remedies under this Article are cumulative, and none will exclude any other right or remedy provided by law or any other provision of this lease. All the rights and remedies may be exercised and enforced concurrently and whenever occasion for their exercise arises.

12.03. Waiver of Breach. Any waiver by Landlord or Tenant of a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach.

ARTICLE 13 INSPECTION BY LANDLORD

Tenant will permit Landlord and its agents, representatives, and employees to enter the premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Landlord's interest in the premises or to perform Landlord's duties under this lease.

ARTICLE 14 ASSIGNMENT AND LEASE

14.01. Assignment by Tenant. Tenant may not sublet, assign, encumber, or otherwise transfer this lease or any right or interest in it or in the premises or the improvements on them, without Landlord's written consent which Tenant acknowledges due to the nature and reason for this lease may be withheld or granted in Landlord's sole and absolute discretion. If Tenant sublets, assigns, encumbers, or otherwise transfers its rights or interests in this lease or in the premises or the improvements on them without Landlord's written consent, Landlord may, at its option, declare this lease terminated. If Landlord consents in writing to an assignment, sublease, or other transfer of all or any of Tenant's rights under this lease, the as-signee or subtenant must assume all of Tenant's obligations under this lease, and Tenant will remain liable for every obligation under the lease.

14.02. Assignment by Landlord. Landlord may assign or transfer any of its interests under this lease at any time without the consent of Tenant.

ARTICLE 15 MISCELLANEOUS

15.01 (a) All notices required under this lease must be given by certified or registered mail, addressed to the proper party, at the following addresses:

Landlord: Arkansas Affordable Homes LLC
P.O. Box 1860
Bentonville, AR 72712

Tenant: Camille Thompson
City of Bentonville
117 West Central Avenue
Bentonville, AR 72712

(b) Either party may change the address to which notices are to be sent by sending written notice of the new address to the other party in accordance with of this section.

15.02. Parties Bound. This lease binds and inures to the benefit of the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this lease permits.

15.03. Choice of Law. This lease is to be construed under Arkansas law, and all obligations of the parties created by this lease are performable in Benton County, Arkansas.

15.04. Legal Construction. If one or more of the provisions contained in this Lease are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the lease, which will be construed as if it had not included the invalid, illegal, or unenforceable provision.

15.05. Prior Agreements Superseded. This lease constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

15.06. Amendment. No amendment, modification, or alteration of this lease is binding unless in writing, dated subsequent to the date of this lease, and duly executed by the parties.

15.05. Rights and Remedies Cumulative. The rights and remedies provided by this lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15.08. Attorney's Fees and Costs. If, as a result of either party's breaching this lease, the other party employs an attorney or attorneys to enforce its rights under this lease, then the breaching or

defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

15.09. Force Majeure. Neither Landlord nor Tenant is required to perform any term or covenant in this lease so long as performance is delayed or prevented by force majeure, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, hurricanes, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant cannot, by exercising due diligence, prevent or overcome, in whole or part.

15.10. Time of Essence. Time is of the essence of this lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this lease to be executed by their duly authorized representatives effective the day and date first written above.

LANDLORD

AFFORDABLE ARKANSAS HOMES, LLC

By: _____

Name: _____

Title: _____

TENANT

CITY OF BENTONVILLE, ARKANSAS

By: _____

Name: _____

Title: _____

**EXHIBIT C
FIXTURES AND ATTACHMENTS**

Inventory Warehouse

- All office furniture
- Racks - inside and outside
- Wire scale
- EPA containment tank for leaking transformers
- Fork lifts
- Generators (3)

Electric

- All office furniture
- Air compressors and attachments (2)
- Welders and attachments
- Drill press
- Lockers
- Used oil container
- Label making table
- Ice machine

Street

- All office furniture
- Generator (2 - 1 at Water/Street, 1 at Sign and Signal Shop)
- Shelving and rack system for sign and signal shop
- Icemaker

Water

- All office furniture
- Vehicle Lift
- Air compressors and attachments (2)
- 2 pressure washers
- Meter test bench and associated equipment
- Metal shelving
- Metal safety cabinets
- Metal rack
- Work benches
- Ice machine

Head Start

- Playground equipment and accessories north and northeast of building
- Head Start shelving and materials, office equipment and furniture
- Playground equipment east of building

EXHIBIT D
Description of Leased Premises

Parcel Numbers

01-05137-000

01-10855-000

01-03587-001

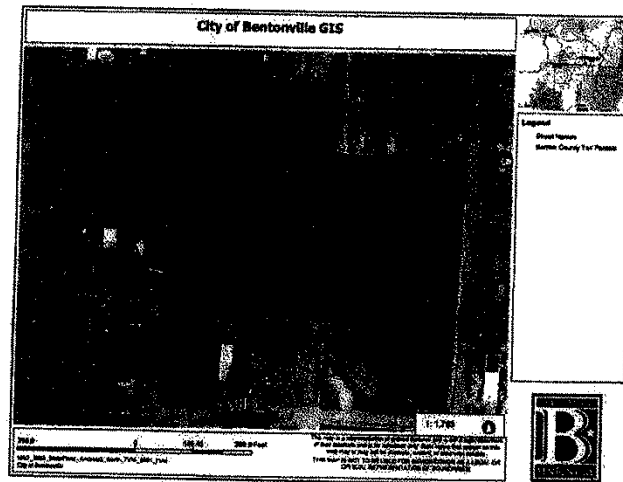
01-01168-000

01-01169-000

01-01170-000

01-01171-000

01-01172-000



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR
AND CITY CLERK TO ENTER INTO A LEASE
AGREEMENT WITH AFFORDABLE ARKANSAS
HOMES, LLC**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into a lease agreement with Affordable Arkansas Homes, LLC as set forth in the Real Estate Contract attached hereto as Exhibit "B".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY		
	Bid Award	Bid #
X	Budget Adjustment	
	Change Order	
	Informational	
	Ordinance	
	Resolution	
	Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Mike Bender

Department: Public Works Director

Phone: 271-6720

ACTION REQUIRED:

Council approval of a budget adjustment recognizing \$7,000,000.00 received from the sale of City Facilities and purchase of Rose Property for \$5,200,000.00 to relocate City Maintenance/Utility Facilities.

COST TO CITY:

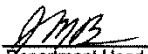
Cost of this Request: \$0

Additional Budget Amount: \$0

☒ One time amount

☐ Continuing O and M

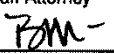
Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	-
Remaining After Adjustment	\$ -

 Department Head 7/10/14
Date

Purchasing Agent Date

 Finance Director 7-11-14
Date

Staff Attorney Date

 Mayor 7/10/14
Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender 

CC:

Date: July 10, 2014

Re: Sale of City Facilities, Purchase of Rose Property and Associated Budget Adjustment, Lease Agreement for City Facilities

This memo covers Four Council agenda items – 1) Real Estate Contract with Affordable Arkansas Homes, LLC for the Sale of City Facilities, 2) Real Estate Contract with Rose Properties, LLC for Purchase of 37 acres on Airport Road, 3) associated budget adjustment, and 4) Lease Agreement with Affordable Arkansas Homes, LLC.

Over the last couple of years there have been several discussions regarding the relocation of the City's SE 3rd Street complex which includes the Street Department, Water Utilities Department, Electric Department and Inventory Warehouse. Several options have been presented to Council including relocation of the Street Department to Melissa Drive and construction of a new Water Admin Building and enclosing Town Branch Creek at the existing SE 3rd Street location to facilitate growth needs of the City utilities departments. Staff has continued to pursue all options in hopes the best solution for the City as a whole is selected and developed. I believe the proposal presented herein is the best opportunity to relocate City facilities from the SE 3rd Street campus to provide for a centrally located, shared complex that allows for growth/expansion of all affected departments.

Staff is proposing to sell the SE 3rd Street Facilities along with other properties to bring in revenue to support relocation and purchase 37 acres located on the south side of Airport Road immediately east of the City Airport for construction of a new, combined facility. The attached agreements reflect the sale of the City Facilities to Affordable Arkansas Homes, LLC for \$7,000,000.00 along with a lease agreement for the SE 3rd Street Facilities to allow the City time to develop a Master Plan for the Rose property and construction of the initial development. The City will receive the \$7,000,000.00 at the time of closing. The City will then lease the property back for \$1 per year. The lease agreement has the timeline for vacating the premises which allows 2 years for the Water and Street portions and 4 ½ years for the remaining portions. Development of the property will include a master plan for overall development of the property followed by plans for immediate development. A consultant contract will be brought back to Council

after staff has advertised and selected a consultant. Money from the sale of the City facilities will cover the \$5,200,000.00 purchase cost of the 37 acres on Airport Road. The 37 acres consists of 18 acres zoned Industrial and 19 acres zoned C-2 Commercial.

Development will be funded by utilizing money already budgeted for relocation or expansions. If you recall, Street has approximately \$5,000,000.00 earmarked for relocating their facilities, Water Department budgeted \$1,500,000.00 for construction of a new administration building this year, and Electric identified \$1,500,000.00 for enclosing Town Branch Creek this year to expand storage and parking. This yields \$8,000,000.00 available for development. The sale of City facilities will leave \$1,800,000.00 for the project. There is also \$3,500,000.00 available in reserves for this project yielding a total of \$13,300,000.00 available immediately for this project. In addition, all departments could budget additional money in the 2015 budget as we move into the design phase and better understand costs. Once a Master Plan is complete, it will be presented to Council along with anticipated costs. Contracts and budget adjustments, as needed, will also be presented to Council as the project progresses.

The four properties to be sold in this agreement include all City facilities in the SE 3rd Street Campus (just under 10 acres), the Head Start Facility (1.5 acres), Price Coffee Property (142 acres), and 9.5 acres from the south end of the Tiger Tank Property. Maps illustrating the extent of the properties are also attached.

Thank you for your consideration of this request



CHECK ALL THAT APPLY	
	Bid Award
	Budget Adjustment
	Change Order
	Informational
	Ordinance
X	Resolution
	Other

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Mike Bender

Department: Public Works Director

Phone: 271-6720

ACTION REQUIRED:

Council approval of a Resolution authorizing the Mayor and City Clerk to enter into a real estate contract with Rose Properties, LLC for the purchase of property referenced as 19 acres of reserved property of the Keeling Subdivision (parcel no. 01-08931-000) and 18 acres of unplatted property (parcel no. 01-00128-000) located at 501 SW Airport Road containing a total of 37 acres, more or less, for the sum of \$5,200,000.00 plus buyer associated closing costs. See attached memo, budget adjustment form and real estate contract.

COST TO CITY:

Cost of this Request: \$5,200,000

Additional Budget Amount: \$5,200,000

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	5,200,000
Remaining After Adjustment	\$ 5,200,000

Department Head: [Signature] Date: 7/10/14

Staff Attorney: CT Date: 7/11/14

Purchasing Agent: [Signature] Date: [Blank]

Mayor: POM Date: 7/16/14

Finance Director: [Signature] Date: 7-11-14

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE



Memo



To: City Council, Mayor McCaslin

From: Mike Bender 

CC:

Date: July 10, 2014

Re: Sale of City Facilities, Purchase of Rose Property and Associated Budget Adjustment, Lease Agreement for City Facilities

This memo covers Four Council agenda items – 1) Real Estate Contract with Affordable Arkansas Homes, LLC for the Sale of City Facilities, 2) Real Estate Contract with Rose Properties, LLC for Purchase of 37 acres on Airport Road, 3) associated budget adjustment, and 4) Lease Agreement with Affordable Arkansas Homes, LLC.

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The four properties to be sold in this agreement include all City facilities in the SE 3rd Street Campus (just under 10 acres), the Head Start Facility (1.5 acres), Price Coffee Property (142 acres), and 9.5 acres from the south end of the Tiger Tank Property. Maps illustrating the extent of the properties are also attached.

Thank you for your consideration of this request

OFFER AND ACCEPTANCE

PARTIES: Rose Properties, LLC, as "Seller", and The City of Bentonville, Arkansas, as "Buyer", hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions:

1. DESCRIPTION

- a) Legal description of real estate ("Property") located in Benton County, Arkansas:

Parcel Numbers 01-00128-000 and 01-0893-000, Benton County, Arkansas, as more particularly described in the attached Exhibit "A."

- b) Street address, if any, of the Property being conveyed is:

501 Airport Road

- c) Personal property including all buildings and improvements on the property and all right, title and interest of Seller in and to adjacent streets, roads, alleys and rights-of-way, and:

None

5.2 

2. PURCHASE PRICE \$ ~~5,100,000.00~~ cash on closing.

3. SURVEY & TITLE COMMITMENT; PERMITTED EXCEPTIONS.

Buyer shall obtain, at Buyer's sole expense, a preliminary title insurance commitment for the Property showing fee simple title in Seller, issued by the Escrow Agent in its capacity as a licensed agent for a nationally recognized title insurer acceptable to Buyer (the "Title Commitment"). At Closing, such insurer, at Buyer's sole expense, shall issue to Buyer an owner's title insurance policy in the amount of the Purchase Price (the "Title Policy"). The Title Commitment and the Owner's Title Policy shall be subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract or otherwise acceptable to Buyer, and in the case of the Title Commitment, those items which shall be discharged by Seller at or before closing. Buyer shall have twenty (20) days from the date of receiving Title Commitment to examine it. If title is found defective, if Buyer has objections to the Survey (as defined below) or the issuer of the Title Commitment has not provided satisfactory assurances that the Title Requirements will be met, Buyer shall notify Seller in writing, within twenty (20) days from the date of receiving the Title Commitment specifying the objection(s) to the Title Commitment or Survey. If the objection(s), in Buyer's opinion, renders title unmarketable, uninsurable, or the objections affect Buyer's intended use of the Property, development of the Project, ability to obtain construction and permanent financing for the Project or contain terms Buyer deems unreasonable, Seller will have thirty (30) days from receipt of such notice within which to attempt to remove such objection(s) to the Title Commitment or Survey. Seller agrees that it shall use a diligent, good faith effort to correct any objection(s), provided, however, Seller shall not be required to spend an amount it deems unreasonable to correct any such

objections. If Seller is unsuccessful in removing such objection(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the title as it then is, or (iii) rescinding this Contract and thereupon Buyer and Seller shall be released, as to one another, of all further obligations and all damages arising under this Contract.

Seller will deliver to Buyer a copy of any survey of the Property in Seller's possession. Buyer shall have the right to obtain a new or recertified survey of the Property (the "Survey") at Buyer's cost. Subject to approval of the Survey by Buyer, the legal description of the Property contained in the Survey will be the description of the Property used in the Deed.

4. **BUYER'S REQUIREMENTS:** Buyer shall undertake to remove the conditions to closing contained in this Contract including, but not limited to, those requirements set out in Exhibit B; provided, however, Buyer has the right to terminate this Contract for any reason or no reason so long as the right of termination is exercised in a timely manner. Seller agrees to cooperate fully with Buyer with respect to Buyer's efforts to obtain all relevant information pertaining to the Property and the permitted uses of it. In the event such conditions cannot reasonably be removed, satisfied, or met or if Buyer determines that the Property is not satisfactory for Buyer's contemplated real estate development on the Property (the "**Project**"), Buyer may terminate this Contract. In all cases, Buyer's sole opinion and judgment shall determine whether Buyer's requirements have been satisfied or met. In the event Buyer does not notify Seller in the manner set forth in paragraph 12(a) of the failure of a condition or Buyer's decision to terminate within ninety (90) days of the Council Approval Date (the "**Buyer's Inspection Period**" or the "**Inspection Period**"), all of Buyer's conditions shall be deemed satisfied

5. **ENVIRONMENTAL WARRANTIES:** Seller represents and warrants that to its actual knowledge, information, and belief, no unlawful toxic substances, hazardous substances, or hazardous waste materials regulated under any applicable federal, state, or local laws have been produced, used, stored, or disposed upon the Property in violation of applicable laws and regulations or that the Property contains or encompasses any wetlands as that term is defined under the Clean Water Act. Seller shall provide Buyer within the timeframe set forth in Paragraph 7 with copies of all environmental assessments, reports, or studies prepared for Seller's use or benefit. In addition, Buyer has permission to commission its own Phase I Environmental Site Assessment (the "**ESA**") of the Property, the scope of which will be determined by Buyer. If the ESA indicates that the Property presents matters that require remediation, Buyer shall notify Seller under the terms and conditions in Paragraph VI.

6. **OPTION TO MITIGATE:** If the ESA indicates that the Property presents any matters that require remediation, Buyer shall first advise Seller in writing ("**Buyer's Notice**") of those items identified in the ESA of which Buyer requires remediation, and allow Seller its Option to Mitigate hereunder prior to Buyer being able to exercise any right to terminate this Contract. Within ten (10) days of receipt of Buyer's Notice, Seller shall advise Buyer in writing ("**Seller's Response**") whether or not it shall remedy some or all of the items specified in Buyer's Notice. Seller shall have up to one hundred twenty (120) days to remedy those items, if it so chooses, at its

sole cost and expense, during which time this Contract shall remain in effect. At the end of the earlier of one hundred twenty (120) days or upon Seller's written notification to Buyer that it has completed the remediation, Buyer shall have twenty (20) days to either satisfy itself that the items in Buyer's Notice have been remedied or to advise Seller that it is terminating this Contract. If Seller's Response advises Buyer that it will not correct some or all of the items specified in Buyer's Notice then Buyer, within ten (10) days after receipt of Seller's Response, shall advise Seller in writing that it shall (i) accept such items "AS IS" and/or correct them itself after the Closing, all without reduction in the Purchase Price, or (ii) elect to terminate this Contract.

7. SELLER DOCUMENTS: Seller agrees to deliver to Buyer within ten (10) days of the Effective Date copies of the following: all title insurance policies and surveys; all plats, covenants, deeds, easements, development plans, construction plans, if any; any market studies; and environmental reports, studies or assessments relating to the Property (collectively, the "Seller Documents"). Buyer shall return all Seller Documents if the Closing does not occur and shall keep the Seller Documents confidential to the best of its ability.

8. SELLER'S REPRESENTATION AND WARRANTIES: Seller represents and warrants as to following matters:

(a) there is no action, suit, or proceeding pending, or to Seller's actual knowledge and belief, threatened or contemplated against or affecting, either directly or indirectly, the Property; and

(b) the Property is not located within any wetlands area as determined under the Clean Water Act and applicable FEMA maps and there is no application currently pending regarding the same.

9. RISK OF LOSS: All risk of loss to the Property shall remain with Seller prior to Closing. If any improvements on the Property are damaged prior to Closing and Seller is either unable or unwilling to restore the Property to the condition it was as of the Effective Date, at Buyer's sole option, Buyer may (i) elect to terminate this Contract or (ii) elect to take the Property as it then is, together with any insurance proceeds payable by virtue of such loss or damage. If Buyer elects to terminate this Contract, Buyer and Seller shall be released, as to one another, of all obligations and liabilities under this Contract.

10. REPAIR AND MAINTENANCE: Between the Effective Date and the date of Closing, Seller shall maintain the Property in substantially the same condition the Property was in on the Effective Date. Further, Seller agrees not to enter into, extend, or renew beyond closing any agreement covering any portion of the Property (or real property contiguous to the Property) or which might change the status, condition, or commercial marketability of the Property without the prior written approval of Buyer.

11. PROVISIONS WITH RESPECT TO CLOSING.

a) Closing Date. The consummation of the transaction contemplated by this Agreement ("Closing") shall take place at such place as designated by Seller on or before October 17, 2014, or at such earlier date as agreed mutually, unless extended by other provisions hereof.

b) Seller's Obligation at Closing. At Closing, Seller shall furnish good and marketable title at closing and execute, acknowledge, and deliver to Buyer a Warranty Deed conveying the Property to Buyer subject to:

- (i) taxes and assessments for year of closing and subsequent years;
- (ii) restrictions, easements and zoning ordinances of record, if any;
- (iii) public utility easements of record, if any.

c) Buyer's Obligations at Closing. Subject to the terms, conditions and provisions hereof, and concurrently with the performance by Seller of its obligations set forth in Section IV b) above, Buyer shall deliver to Seller cashier's check or other immediate local funds in the amount set forth in Section II of this Agreement.

d) Closing Costs.

Buyer and Seller shall equally share all costs and expenses in connection with the Closing, including the following:

- (i) Documentary stamps which are required to be affixed to the Warranty Deed;
- (ii) The intangible tax required by law on the mortgage.
- (iii) All recording costs, including recording of the deed, mortgage, and any documents required in connection with the title insurance commitment.
- (iv) The premium payable for the title commitment and title policy issued pursuant thereto, if any.
- (v) Survey work.

e) Proration of Taxes. Taxes for the year of the Closing shall be prorated to the date of Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation.

12. OTHER CONTRACTUAL PROVISIONS.

a) Notices. Any notice to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing, and may be given by certified mail and shall be deemed to have been given and received when a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail; and if given otherwise than by certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses stated above.

Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

b) Assignability. The Buyer is prohibited from assigning all or any part of this Agreement.

c) Entire Agreement; Modification. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

d) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

e) Headings. Descriptive headings are for convenience and shall not control or affect the meaning or construction of any provision of this Agreement.

f) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

g) Counterparts. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Agreement.

h) Interpretation. Whenever the context hereof shall require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

i) Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

j) Section 1031 Exchange. Upon request by Seller, Buyer shall cooperate with Seller in order to effectuate the goal of Seller to have this transaction qualify for a tax deferred treatment under Section 1031 of the Internal Revenue Code of 1986, as amended, provided that Buyer is put to no additional expense, in this regard, and that the closing is not materially delayed. Formal provisions detailing the exchange shall be entered into by the parties and made a part of the final contract of exchange, no later than as such time as Buyer shall acknowledge satisfaction of the contingencies to its obligation to close this transaction.

k) Time for Acceptance & Effective Date. If this offer is not executed by both parties hereto on or before July 31, 2014, this offer shall thereafter be null and void. The date of the Agreement

("Effective Date") shall be the date when the last one of the Seller and Buyer has signed this offer.

1) City Council Approval. This offer is conditioned upon the City of Bentonville receiving Approval from the Bentonville City Council and funding to purchase this property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Witnesses: "Buyer" (The City of Bentonville, Arkansas) by:

Attest:

Mayor Bob McCaslin

City Clerk

Date: _____

"Seller" (Rose Properties, LLC) by:



Date: 5/16/14

Addresses:

City of Bentonville
ATTN: Camille Thompson
117 West Central Avenue
Bentonville, AR 72712

Rose Properties, LLC
ATTN: Larry Rose
Box 65 SW Regency Parkway, Suite 16
Bentonville, AR 72712

The form of this instrument was approved by The Elloit Law Firm, PLLC and certain information was completed by Stewart Title of Arkansas, Inc based upon information provided by others.

File #: 12060133

WARRANTY DEED (LLC)

KNOW ALL MEN BY THESE PRESENTS:

That 28th Street, LLC, GRANTOR, an Arkansas Limited Liability Company, duly authorized by proper resolution of its Members / Managers, for the consideration of the sum of ~~Ten and no/100 Dollars (\$10.00)~~, and other good and valuable consideration in hand paid by Rose Properties, LLC or Assigns, GRANTEE, the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the said GRANTEE(S) and unto GRANTEE(S)' Successors and assigns forever the following described land, situated in the County of Benton, State of Arkansas, to-wit:

A part of the NE 1/4 of the NW 1/4 of Section 7, Township 19 North, Range 30 West, Benton County, Arkansas and being more particularly described as follows: From a found iron pin at the NE corner of the NE 1/4 of the NW 1/4 of said Section 7, thence North 88°05'54" West along the North line of said NE 1/4 of the NW 1/4 a distance of 249.93 feet to the point of beginning, said point being a 8" diameter fence post; thence South 01°47'00" West 1321.67 feet to a found iron pin on the South line of said NE 1/4 of the NW 1/4; thence North 88°08'11" West along said South line a distance of 595.00 feet to a 10" diameter fence post; thence North 01°48'18" East 1322.07 feet to a 8" diameter fence post on the North line of said NE 1/4 of the NW 1/4; thence along said North line South 88°05'54" East 394.90 feet to the point of beginning, containing 18.65 acres, more or less. Subject to Arkansas State Highway 204 (Airport Road) on the North side thereof.

SUBJECT TO RIGHT OF WAY/EASEMENTS AND RESTRICTIONS, IF ANY

TO HAVE AND TO HOLD the same unto the said GRANTEE(S) and unto its successors and assigns forever, with all appurtenances thereunto belonging. And GRANTOR(S) hereby covenant with the said GRANTEE(S) that GRANTOR(S) will forever warrant and defend the title to said lands against all claims whatever.

IN TESTIMONY WHEREOF, The name of the grantor is hereunto affixed by its President and its seal affixed by its Secretary, this 28th day of December, 2006.



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2007 205
Recorded in the Above
Deed Book & Page
01-03-2007 08:27:23 AM
Brenda DelShields-Circuit Clerk
Benton County, AR
Book/Pag 2007/205
Term/Cashier: CINCILK04 / Jackson
Tran: 5023.144190.401699
Recorded: 01-03-2007 08:27:30
OFF Deed 11.00
REC Recording Fee 0.00
Total Fees: \$ 11.00

WACO Title Company

WARRANTY DEED

With Relinquishment of Dower and Curtesy

FILE # 0310329 Was

KNOW ALL MEN BY THESE PRESENTS:

That, Accomodators, Inc., as Qualified Intermediary for Robert C. Soos Jr. and Laurie A. Soos, Husband and Wife, and Richard W. Adams as Trustee for Richard W. Adams Revocable Trust dated 1/20/94, hereinafter called Grantor(s), for and in consideration of the sum of --One AND 00/100 -- DOLLARS--(\$1.00)--and other good and valuable consideration in hand paid by Rose Properties, LLC, hereinafter called Grantee(s), the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto said Grantee(s), and unto her heirs and assigns forever, the following lands lying in Benton County, Arkansas to-wit:

All of the Reserved area as shown on Keeling Subdivision, recorded in Plat Record P3 at Page 153, and also being located in a part of the NW1/4 of the NE1/4 and in a part of the NW1/4 of Fractional Section 7, Township 19 North, Range 30 West in Bentonville, Benton County, Arkansas, more precisely described as follows: Starting at the NE Corner of the NE1/4 of the NW 1/4 of Fractional 7 for the true Point of Beginning; Thence S89°06'34"E 338.48 feet; thence N69°58'29"E 514.77 feet; Thence S89°06'34"E 982.78 feet; Thence S89°57'40"W 520.43 feet; Thence S89°57'49"W 243.77 feet; Thence N89°08'04"W 1321.39 feet; Thence N89°57'55"E 249.88 feet to the true Point of Beginning containing 19.188 acres, more or less, Subject to the right-of-way of Arkansas State Highway #204 (Airport Road) on the North side.



To have and to hold the same unto the said Grantee(s), and unto her heirs and assigns forever, with all appurtenances thereto belonging.

And we hereby covenant with said Grantee(s) that we will forever warrant and defend the title to the said lands against all claims whatsoever.

And we, Robert C. Soos Jr. and Laurie A. Soos for and in consideration of the said sum of money, do hereby release and relinquish unto the said Grantee(s) all our rights of curtesy, dower and homestead in and to the said lands.

WITNESS our hands and seals on this 17th day of Sept, 2003.

I hereby certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.

GRANTOR OR AGENT: Richard W. Adams

GRANTEE ADDRESS: Bentonville, AR

Richard W. Adams, Trustee

ACKNOWLEDGMENT

2003 27082
Recorded in the Above
Deed Book & Page
09-22-2003 09:31:26 AM
Brenda DeShields-Circuit Clerk
Benton County, AR

STATE OF ARKANSAS }
COUNTY OF Washington } SS.

BE IT REMEMBERED, that on this day came before me, the undersigned, a notary public within and for the County aforesaid, duly commissioned and acting, Robert C. Soos Jr. and Laurie A. Soos, Husband and Wife, Richard W. Adams in his capacity as trustee for the Richard W. Adams Revocable Trust dated 1/20/94 to me well known as (or satisfactorily proven to be) the grantor(s) in the foregoing Deed, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public this 12th day of Sept, 2003

[Redacted Signature]
Notary Public

My Commission Expires 3-10-2013
DAVID B. FISHER
Notary Public-Arkansas
WASHINGTON COUNTY
Prepared By: [Redacted]
Walter P. Mayo, Attorney
WACO Title Company

Waco Title Company
212 W. Emma Avenue
Springdale, AR 72764

Book/Pg: 2003/27081
Term/Cashier: CIRCULAR / TBsher
Tran: 1082.37320.98613
Recorded: 09-22-2003 09:31:40
OFF Deed 11.00
REC Recording Fee 3.00
Total Fees: \$ 11.00

Benton County, AR
I certify this instrument was filed on
09-22-2003 09:31:26 AM
and recorded in Deed Book
2003 at pages 27081 - 27082
Brenda DeShields-Circuit Clerk

EXHIBIT B

Buyer's Inspection Period

The transaction contemplated herein is conditioned upon Buyer determining, at its sole cost, the items set forth herein within Buyer's Inspection Period, except as otherwise provided or extended. Any item not objected to in writing within Buyer's Inspection Period or the extension thereto, or the period provided for herein, shall be deemed satisfied. In the event Buyer terminates this Contract because of the failure of any condition herein, subject to Seller's Option to Mitigate, Buyer and Seller shall be released, as to one another, of all further obligations and liabilities under this Contract.

(a) Buyer's determination that it can obtain all necessary governmental approvals for its intended use of the Property including satisfaction of Buyer's density requirements for the Project.

(b) Buyer's determination that the Property has full, free, and adequate ingress and egress from public highways and roads. Seller hereby warrants that it has no knowledge of any fact or condition, which would result in the termination of any existing access.

(c) Buyer's reasonable determination that all utilities necessary for Buyer's intended use are available to the Property or will be constructed and extended to a boundary line of the Property prior to the expiration of Buyer's Inspection Period.

(d) Buyer's determination that it will be able to obtain funding approval from the City Council.

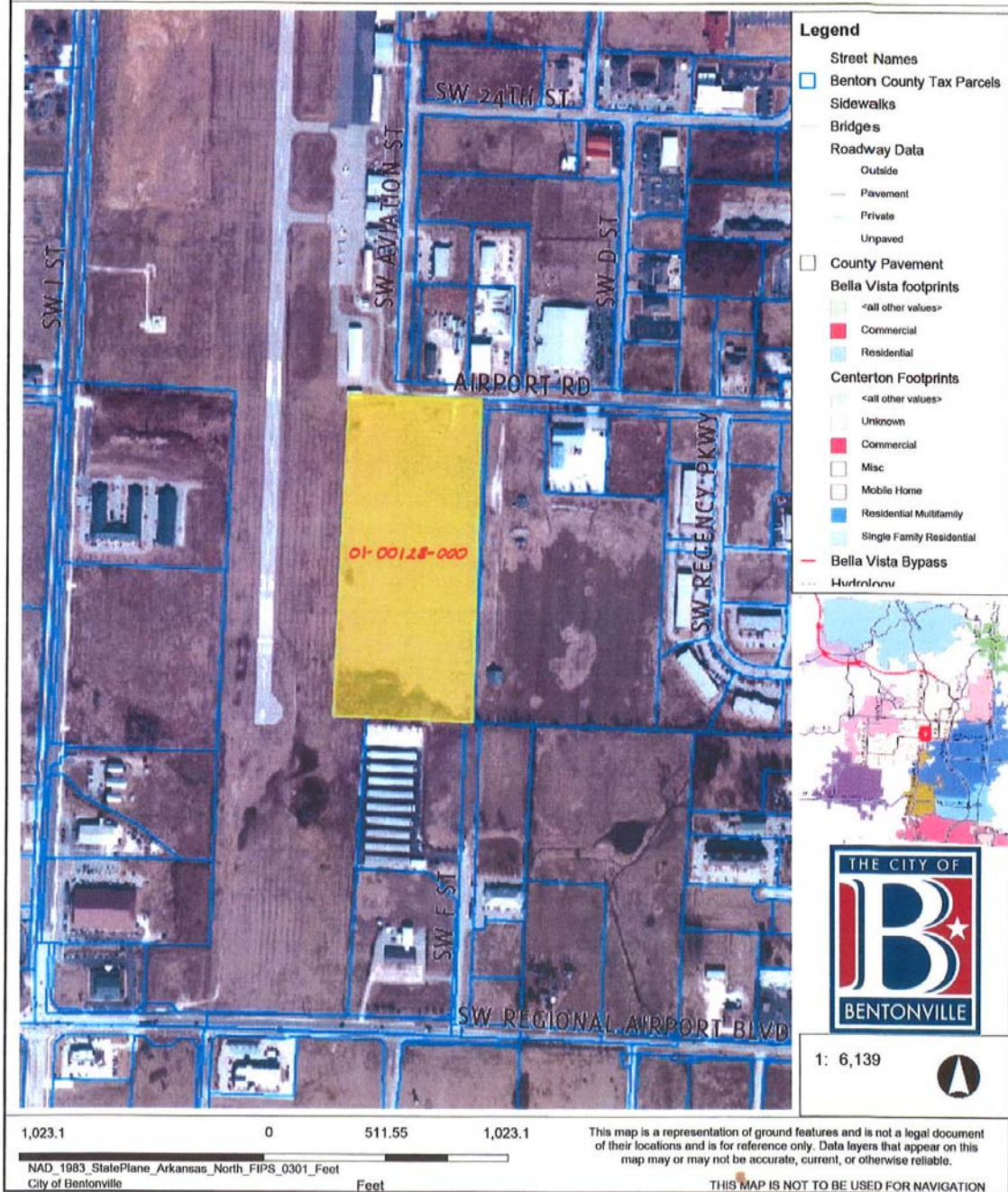
(e) Buyer's determination, through the use of engineering, environmental and related tests, percolation tests, geotechnical studies and soil boiling, (the "**Site Investigation**") that the Property is satisfactory for Buyer's use and that no portion of the Property lies within any wetlands area or within a floodway or flood zone. Seller hereby grants to Buyer the right to enter the Property for the purpose of conducting, to the extent possible, the Site Investigation. Seller shall provide Buyer with copies of any environmental reports or studies for the Property in Buyer's possession. Upon Seller's request, Buyer shall provide Seller immediately with a copy of any reports or studies, which Buyer has performed on or about the Property pursuant to this Exhibit.

(f) Buyer may, but is not required to, engage the services of an engineer or other third party to inspect the Property. In the event of the purchase and sale of the Property hereunder, Seller shall sell the Property to Buyer, and Buyer agrees that is purchasing the Property from Seller "AS IS", WITHOUT ANY REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ITS FITNESS FOR ANY PARTICULAR USE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN. Upon Seller's request, Buyer will promptly provide Seller with a copy of any and all reports or studies, which Buyer has performed on or about the Property under this Subparagraph.

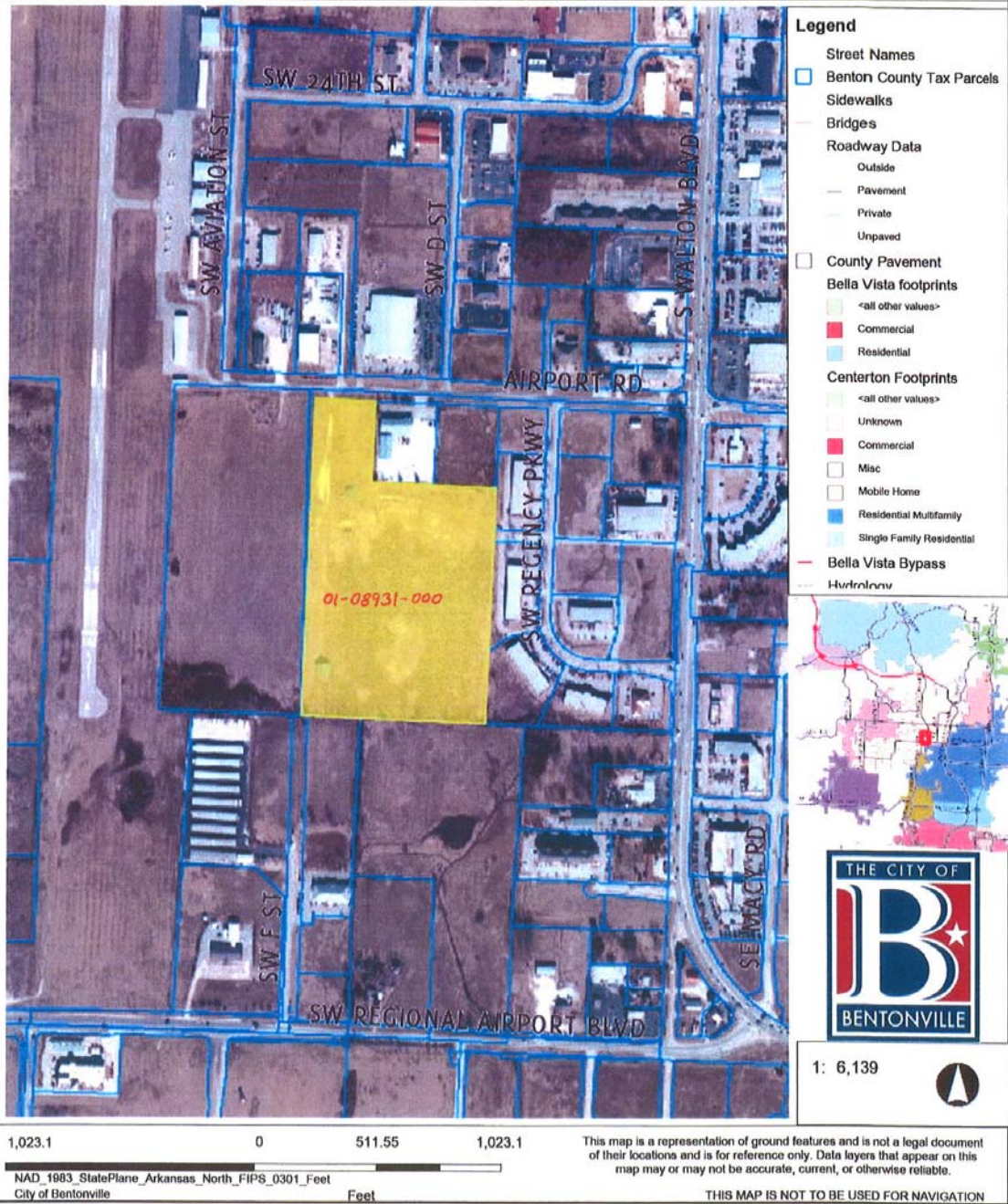
(g) Buyer's review of the Title Commitment and any ALTA Survey of the Property whether prepared by Seller or Buyer. Notwithstanding the foregoing, Seller shall furnish Buyer with copies of any surveys of the Property in its possession. If a survey shows an encroachment, overlap, gore

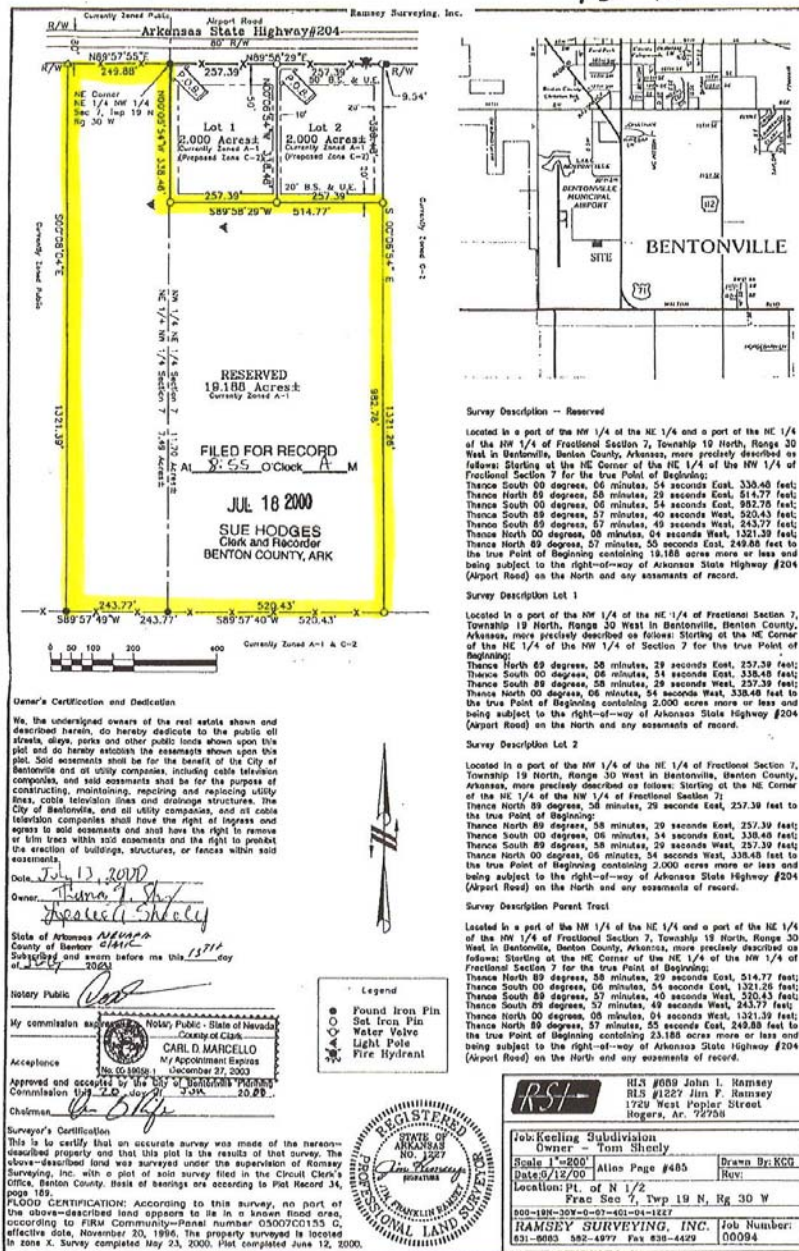
or other objectionable condition, (collectively, the "**defect(s)**"), Buyer shall notify Seller in writing specifying the defect(s). Seller shall have thirty (30) days from receipt of notice within which to remove or cure the defect(s). If Seller is unsuccessful in curing such defect(s) within said time, Buyer shall have the option of (i) extending such time period, (ii) accepting the Property as the survey then shows, or (iii) rescinding this Contract.

City of Bentonville GIS



City of Bentonville GIS





RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR AND
CITY CLERK TO ENTER INTO AN OFFER AND
ACCEPTANCE FOR THE PURCHASE OF REAL
PROPERTY FROM ROSE PROPERTIES, LLC**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into an Offer and Acceptance for the Purchase of Real Property from Rose Properties, LLC as set forth in the Real Estate Contract attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK



CHECK ALL THAT APPLY	
Bid Award	Bid #
Budget Adjustment	
Change Order	
Informational	
Ordinance	
X Resolution	
Other	

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-5993

ACTION REQUIRED:

Approval for Mayor and City Clerk to enter into a Development Agreement with Cornerstone Aviation, LLC for the construction of public improvements to support a new 7 bay T hangar on the west side of Bentonville Municipal Airport.

COST TO CITY:

Cost of this Request:

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	
Remaining After Adjustment	\$ -

Department Head: [Signature] Date: 7/21/14

Staff Attorney: _____ Date: _____

Purchasing Agent: _____ Date: _____

Mayor: _____ Date: _____

Finance Director: _____ Date: _____

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE





Memorandum

To: Mayor Bob McCaslin, City Council
CC: Travis Matlock, Engineering Director
From: Ben Peters, City Engineer
Date: 7/22/2014
Re: West Side Hangar Project

Cornerstone Aviation, LLC has expressed an interest in constructing an airport hangar building on the west side of the Bentonville Municipal Airport. The proposed hangar is a 7 bay, T hangar of approximately 11,748 square feet. This will be the first hangar constructed along the west taxiway which was completed several years ago.

As part of the development process, it was determined that additional improvements are required to make a hangar building viable. Examples of those improvements are asphalt aprons, driveway, parking lot, utility extensions and stormwater improvements.

The project as a whole has been designed by CEI Engineering Incorporated. The design contract with CEI was approved at the March 11, 2014 Council meeting at a cost of \$26,220.00. The public portions of the project were separated from the building improvements and were bid by City staff. The low bidder is Don Peters Construction (no relation to City Engineer, Ben Peters) of Cave Springs, AR. The bid is \$282,688.45. The total cost for design and construction related to public improvements is therefore \$308,908.45.

A grant application was submitted by City staff to the Arkansas Department of Aeronautics. The 80/20 grant was considered by the Commission at its regularly scheduled meeting on May 14, 2014. The Commission voted unanimously to award the grant to the City at a value of \$247,127 (80% of \$308,908.45).

The developer has agreed to fund the 20% matching share of the grant plus the construction and design costs for the building.

After the grant award notification, it was discovered that the Airport Advisory Board Bylaws prohibit any member of the Board from entering into a contract with the City of Bentonville.

July 22, 2014

Brian Baldwin was the Chairman of the Airport Advisory Board and is also a partner in Cornerstone Aviation LLC. As soon as staff became aware of the conflict, the items were withheld from the Council Agenda and advice was requested from legal staff. Upon review of the above information, state law and ethics codes by legal it has been determined that if Mr. Baldwin stepped down from the Airport Advisory Board that the hangar construction and all of its agreements would not violate ethics or laws.

Mr. Baldwin resigned his position on the Airport Advisory Board effective July 18, 2014.

Staff has reviewed the agreements and contracts and believes that it is in the best interest of the Bentonville Municipal Airport to go forward with the project and agreements and contracts.

There are three agenda items:

A Developers Agreement – The developer agrees to pay the match portion of the grant and front the 80% grant portion in exchange for a reimbursement by the City of the exact dollar amount received from the grant.

A Construction Contract with Don Peters Construction – the contract amount is \$282,688.45 for the public improvements associated with the hangar project.

A Ground Lease Agreement with Cornerstone Aviation LLC – a 35 year lease for the building footprint at \$0.20 per square foot adjusted annually by the Consumer Price Index.

The above agreements are consistent with past hangar projects at Bentonville Municipal Airport and should spur the development of the SW “I” street frontage. Staff recommends approval of all three agenda items.

AGREEMENT

THIS AGREEMENT, is entered into this ____ day of _____, 2014, by and between the City of BENTONVILLE, ARKANSAS, hereinafter referred to as "the City", and CORNERSTONE AVIATION, LLC., HEREINAFTER REFERRED TO AS "Cornerstone" witness that:

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND OTHER CONSIDERATIONS STATED HEREIN, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

Cornerstone shall:

1. Pay to the City the sum of \$308,908.45 within 30 days of the date of this agreement, Said funds shall be used exclusively for the "Bentonville Municipal Airport West Side Improvements" project, including construction and engineering services as more particularly described in the plan set titled "Large Scale Development Plans, Bentonville Municipal Airport, West Side Improvements, SW "I" Street, Bentonville, AR" sealed by Thomas C. Oppenheim on March 12, 2014.

The City shall:

1. Award the bid for the "Bentonville Municipal Airport West Side Improvements" project and administer said project to completion with the assistance of CEI Engineering.
2. Provide verification of completed project to Mr. John Knight, Arkansas Airport Commission.
3. Upon approval by the Arkansas Airport Commission, up to 80% of the cost of the project will be reimbursed to the City in the form of a grant.
4. Provide Cornerstone funds equal to the exact dollar amount of the grant received from the Arkansas Airport Commission.

This agreement has been approved by the parties as follows:

Cornerstone Aviation, LLC

City of Bentonville

By _____
Brian Baldwin, Partner

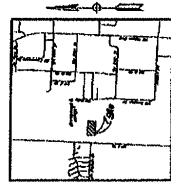
By _____
Mayor Bob McCaslin

Attest: _____

LARGE SCALE DEVELOPEMENT PLANS BENTONVILLE MUNICIPAL AIRPORT WEST SIDE IMPROVEMENTS SW "I" STREET BENTONVILLE, AR

GENERAL NOTES:

1. THESE PLANS WERE PREPARED FOR THE BENTONVILLE MUNICIPAL AIRPORT PROJECT, WHICH IS A PART OF THE BENTONVILLE MUNICIPAL AIRPORT IMPROVEMENT PROJECT. THE PROJECT IS A PART OF THE BENTONVILLE MUNICIPAL AIRPORT IMPROVEMENT PROJECT.
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Vicinity Map

SHEET LIST TABLE

1	SW I STREET
2	SW I STREET
3	SW I STREET
4	SW I STREET
5	SW I STREET
6	SW I STREET
7	SW I STREET
8	SW I STREET
9	SW I STREET
10	SW I STREET

RESOURCE LIST:

1	SW I STREET
2	SW I STREET
3	SW I STREET
4	SW I STREET
5	SW I STREET
6	SW I STREET
7	SW I STREET
8	SW I STREET
9	SW I STREET
10	SW I STREET

OWNER:

BENTONVILLE MUNICIPAL AIRPORT
 1000 W. 10TH STREET
 BENTONVILLE, AR 72716

ARCHITECT:

CEI ENGINEERING, INC.
 1000 W. 10TH STREET
 BENTONVILLE, AR 72716

FLOOD CERTIFICATION:

THESE PLANS WERE PREPARED FOR THE BENTONVILLE MUNICIPAL AIRPORT PROJECT, WHICH IS A PART OF THE BENTONVILLE MUNICIPAL AIRPORT IMPROVEMENT PROJECT. THE PROJECT IS A PART OF THE BENTONVILLE MUNICIPAL AIRPORT IMPROVEMENT PROJECT.



CEI Engineering Associates, Inc.
 1000 W. 10TH STREET
 BENTONVILLE, AR 72716



Arkansas * California * Georgia * Minnesota * Pennsylvania * Texas



Arkansas * California * Georgia * Minnesota * Pennsylvania * Texas

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A DEVELOPMENT AGREEMENT WITH CORNERSTONE AVIATION, LLC FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS TO SUPPORT HANGAR DEVELOPMENT AT THE BENTONVILLE MUNICIPAL AIRPORT

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into a development agreement with Cornerstone Aviation , LLC for construction of public improvements to support hangar development at the Bentonville Municipal Airport as outlined in the agreement attached hereto as Exhibit "A".

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2014.

APPROVED:

Bob McCaslin, Mayor

ATTEST:

Linda Spence, City Clerk



CHECK ALL THAT APPLY			
X	Bid Award	Bid #	14-22
X	Budget Adjustment		
	Change Order		
	Informational		
	Ordinance		
	Resolution		
	Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-5993

ACTION REQUIRED:

Council approval for the Mayor and City Clerk to enter into a contract with Don Peters Construction for public improvements in support of a new 7 bay T hangar at Bentonville Municipal Airport. The City has received a grant from the Arkansas State Department of Aeronautics for \$247,126.76 (80%) of the project. The remaining cost will be paid by the hangar owner, Cornerstone, LLC.

COST TO CITY:

Cost of this Request: \$308,908

Additional Budget Amount: \$308,908

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	308,908
Remaining After Adjustment	\$ 308,908

 7/21/14
Department Head Date

Staff Attorney Date

Purchasing Agent Date

Mayor Date

Finance Director Date

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

www.bentonvillear.com



PLEASE RECYCLE





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To: Mayor Bob McCaslin, City Council
CC: Travis Matlock, Engineering Director
From: Ben Peters, City Engineer
Date: 7/22/2014
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CEI Engineering Associates, Inc.
3108 SW Regency Parkway, Suite 2
Bentonville, AR 72712
Phone: (479) 273-9472
Mike Ciofeller

Itemized Bid Tabulation
Bentonville Municipal Airport - West Side Improvements
Bentonville, AR
CEI Project #20043.0

Item	Quantity	Unit	Engineer's Estimate		Don Peters Construction, Inc.		Dean Crowder Construction, Inc.		Cobar Contracting, Inc.		T.M.T., Inc.	
			Cost	Total	Cost	Total	Cost	Total	Cost	Total	Cost	Total
1 Mobilization, Insurance, Staking & Boring	1	LS	\$10,000.00	\$10,000.00	\$17,870.00	\$17,870.00	\$11,640.00	\$11,640.00	\$12,000.00	\$12,000.00	\$29,056.45	\$29,056.45
2 Erosion Control Maintenance	1	LS	\$1,000.00	\$1,000.00	\$520.00	\$520.00	\$871.00	\$871.00	\$7,000.00	\$7,000.00	\$1,053.90	\$1,053.90
3 Maintenance of Traffic	1	LS	\$500.00	\$500.00	\$780.00	\$780.00	\$840.00	\$840.00	\$5,000.00	\$5,000.00	\$519.40	\$519.40
4 Construction Entrance	111	SY	\$12.00	\$1,332.00	\$7.50	\$832.50	\$25.90	\$2,874.90	\$16.22	\$1,800.42	\$17.15	\$1,903.65
5 Concrete Walkout	1	EA	\$1,500.00	\$1,500.00	\$624.00	\$624.00	\$375.00	\$375.00	\$1,500.00	\$1,500.00	\$772.20	\$772.20
6 Temporary Re-vegetation	1,000	SY	\$1.25	\$1,250.00	\$0.42	\$420.00	\$1.25	\$1,250.00	\$1.90	\$1,900.00	\$0.50	\$500.00
7 Site Fence	656	LF	\$2.50	\$1,640.00	\$4.16	\$2,728.96	\$3.56	\$2,320.80	\$5.00	\$3,280.00	\$3.60	\$2,361.60
8 Rock Check Dam	4	EA	\$225.00	\$900.00	\$254.80	\$1,019.20	\$200.00	\$800.00	\$1,000.00	\$4,000.00	\$282.75	\$1,131.00
9 Rock Rip	18	SF	\$7.00	\$126.00	\$11.60	\$208.80	\$37.70	\$678.60	\$100.00	\$1,800.00	\$42.00	\$756.00
10 Strip Topsoil	1,500	CY	\$6.00	\$9,000.00	\$5.10	\$7,650.00	\$1.95	\$2,925.00	\$8.00	\$12,000.00	\$4.10	\$6,150.00
11 General Excavation	1,000	CY	\$4.50	\$4,500.00	\$5.10	\$5,100.00	\$3.65	\$3,650.00	\$12.00	\$12,000.00	\$10.30	\$10,300.00
12 Import Fill	2,800	CY	\$12.00	\$33,600.00	\$12.17	\$34,076.00	\$12.10	\$33,880.00	\$13.00	\$36,400.00	\$16.45	\$46,060.00
13 Export Fill	5,800	CY	\$10.00	\$58,000.00	\$6.97	\$40,426.00	\$7.85	\$45,530.00	\$9.50	\$55,100.00	\$10.85	\$62,770.00
14 8" Top & Value Sleeve	1	EA	\$2,000.00	\$2,000.00	\$3,470.00	\$3,470.00	\$3,535.00	\$3,535.00	\$2,850.00	\$2,850.00	\$3,635.00	\$3,635.00
15 8" Water Pipe	400	LF	\$40.00	\$16,000.00	\$40.30	\$16,120.00	\$44.25	\$17,700.00	\$24.00	\$9,600.00	\$30.80	\$12,320.00
16 8" M.J. Gate Valve	2	EA	\$800.00	\$1,600.00	\$1,404.00	\$2,808.00	\$1,580.00	\$3,160.00	\$1,280.00	\$2,560.00	\$1,953.50	\$3,907.00
17 8" M.J. Flanges	1	LS	\$2,000.00	\$2,000.00	\$1,943.00	\$1,943.00	\$2,415.00	\$2,415.00	\$4,000.00	\$4,000.00	\$1,591.50	\$1,591.50
18 Fire Hydrant	1	EA	\$3,500.00	\$3,500.00	\$3,701.00	\$3,701.00	\$4,170.00	\$4,170.00	\$4,200.00	\$4,200.00	\$4,902.50	\$4,902.50
19 10" HDPE	40	LF	\$18.00	\$720.00	\$31.20	\$1,248.00	\$22.75	\$910.00	\$20.00	\$800.00	\$35.00	\$1,400.00
20 14"x21" Elliptical RCP FTS	410	LF	\$80.00	\$32,800.00	\$92.56	\$37,949.60	\$89.75	\$36,800.00	\$47.00	\$19,270.00	\$77.10	\$31,611.00
21 14"x21" Elliptical RCP FTS	4	EA	\$1,080.00	\$4,320.00	\$1,123.25	\$4,493.00	\$1,770.00	\$7,080.00	\$850.00	\$3,400.00	\$822.55	\$3,280.20
22 Concrete End Wall	2	EA	\$500.00	\$1,000.00	\$1,040.00	\$2,080.00	\$1,680.00	\$3,360.00	\$2,550.00	\$5,100.00	\$945.95	\$1,891.90
23 3" HDAC	509	SY	\$15.00	\$7,635.00	\$13.70	\$6,973.30	\$19.25	\$9,798.25	\$20.85	\$10,663.55	\$16.80	\$8,551.20
24 6" Class 3 Base Course	552	SY	\$6.25	\$3,450.00	\$7.20	\$3,974.40	\$6.75	\$3,712.50	\$11.25	\$6,210.00	\$6.65	\$3,670.80
25 4" HDAC	2,303	SY	\$21.00	\$48,363.00	\$18.31	\$42,167.63	\$22.15	\$51,011.45	\$24.65	\$56,788.55	\$21.80	\$50,205.40
26 6" Class 3 Base Course	2,504	SY	\$8.75	\$21,910.00	\$9.32	\$23,337.28	\$8.20	\$20,532.80	\$13.50	\$33,804.00	\$9.00	\$22,536.00
27 Wheel Stops	5	EA	\$300.00	\$1,500.00	\$62.40	\$312.00	\$75.00	\$375.00	\$250.00	\$1,250.00	\$94.50	\$472.50
28 Parking Striping	93	LF	\$1.00	\$93.00	\$3.36	\$312.48	\$0.35	\$32.55	\$0.35	\$32.55	\$0.40	\$37.20
29 Pavement Marking	1	EA	\$500.00	\$500.00	\$158.00	\$158.00	\$85.00	\$85.00	\$100.00	\$100.00	\$97.50	\$97.50
30 Place Topsoil	750	CY	\$10.00	\$7,500.00	\$16.64	\$12,480.00	\$1.85	\$1,387.50	\$17.00	\$12,750.00	\$10.75	\$8,062.50
31 Bermuda Grass Seed	4,700	CY	\$1.25	\$5,875.00	\$0.36	\$1,692.00	\$1.10	\$5,170.00	\$0.75	\$3,525.00	\$1.30	\$6,110.00
32 Bermuda Grass Sod	1,750	CY	\$3.50	\$6,125.00	\$2.98	\$5,215.00	\$2.80	\$4,900.00	\$6.00	\$10,500.00	\$2.20	\$3,850.00
Total				\$ 290,948.00		\$ 282,688.45		\$291,838.35		\$ 341,564.47		\$ 330,012.40

NOTES:
Contractor had a mathematical computation error in their bid form. The corrected calculation is shown on this bid tabulation (shown as bold and italic).

DOCUMENT 00300

BID FORM

for
***Bentonville Municipal Airport
West Side Improvements***
Bentonville, Arkansas

Bid of DON PETERS CONSTRUCTION, INC. (hereinafter called "Bidder"), a corporation, organized and existing under the laws of the State of ARKANSAS, or a partnership, or an individual doing business as

To: City of Bentonville, Arkansas (hereinafter called the "OWNER"):

The Bidder, in compliance with your Advertisement For Bids, and having examined the drawings and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including normal inclement weather conditions and the availability of materials, and labor, hereby proposes to furnish all labor, materials, and equipment to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents. The costs of miscellaneous material items not listed below that are required for a complete job shall be included in the prices below and shall not be a cause for extra claim for extra compensation.

Bidder hereby agrees to commence work under this contract on or before a date to be agreed upon by CONTRACTOR and OWNER, to substantially complete the project within 105 calendar days, and to fully complete the project within 120 calendar days thereafter as stipulated in the General Conditions.

Calendar day contract time includes delays for normal weather-related events, such as rain, snow, and freezing temperatures that may affect the progress of the construction in the following amounts on a per-month basis as hereinafter set out. Only weather-related delays in excess of these amounts will be considered for time extensions, if requested by the Contractor.

DAYS INCLUDED IN CONTRACT TIMES FOR NORMAL WEATHER-RELATED EVENTS ARE:

(On A Monthly Basis)

Month	Normal Weather-Related Events
January	11
February	9
March	8
April	8
May	8
June	8
July	7
August	7

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00300-1

September	7
October	7
November	7
December	8

Bidder acknowledges receipt of the following addendum

Addendum No.

Subject

<u>1</u>	<u>PROJECT MANUAL, DIV. 1 SECTION PREVIOUSLY OMITTED</u>
<u>2</u>	<u>BID FORM, SHT. 3 OF 12 SITE PLAN, SHT. 6 OF 12 EROSION CONTROL PLAN, REDISTRIBUTE GEOTECHNICAL REPORT</u>

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00300-2

Line No.	Estimated Quantity	Unit	Description of Bid Item	Unit Price Bid	Item Total
1	1	LS	Mobilization, Insurance, Staking, & Bonding		
	<i>Seventeen thousand eight hundred twenty</i> (Lump Sum price written in words)		<i>lump sum</i>	\$ 17,870.00 /LS (In numerals)	\$ 17,870.00 (In numerals)
2	1	LS	Temporary Erosion Control Maintenance		
	<i>Five hundred twenty dollars lump sum</i> (Lump Sum price written in words)			\$ 520.00 /LS (In numerals)	\$ 520.00 (In numerals)
3	1	LS	Maintenance of Traffic		
	<i>Seven hundred eighty and two</i> /LS (Lump Sum price written in words)			\$ 780.00 /LS (In numerals)	\$ 780.00 (In numerals)
4	111	SY	Construction Entrance		
	<i>Seven and 50/100 per sq ft</i> (Lump Sum price written in words)			\$ 7.50 /SY (In numerals)	\$ 832.50 (In numerals)
5	1	EA	Concrete Washout		
	<i>Six hundred and twenty four & 80/100</i> /LS (Lump Sum price written in words)			\$ 624.00 /EA (In numerals)	\$ 624.00 (In numerals)
6	1,000	SY	Temporary Re-vegetation		
	<i>Forty two cents per sq yd.</i> (Unit price per square foot written in words)			\$ 0.42 /SY (In numerals)	\$ 420.00 (In numerals)
7	656	LF	Silt Fence		
	<i>Four and 16/100 per LF</i> (Lump Sum price written in words)			\$ 4.16 /LF (In numerals)	\$ 2,728.96 (In numerals)
8	4	EA	Rock Check Dam		
	<i>Two hundred fifty four & 80/100</i> /EA (Unit price per square foot written in words)			\$ 254.80 /EA (In numerals)	\$ 1,019.20 (In numerals)
9	18	SF	Rip Rap		
	<i>Eleven and 60/100</i> /SF (Unit price in square foot written in words)			\$ 11.60 /SF (In numerals)	\$ 208.80 (In numerals)

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00300-3

Line No.	Estimated Quantity	Unit	Description of Bid Item	Unit Price Bid	Item Total
10	1,500	CY	Strip Topsoil		
	<i>Five and 1/2</i>	<i>100</i>	<i>1CY</i>	<i>\$ 5.10</i> <i>1CY</i>	<i>\$ 7,650.00</i>
	(Unit price per square foot written in words)			(In numerals)	(In numerals)
11	1,000	CY	General Excavation		
	<i>Five and 1/2</i>	<i>100</i>	<i>1CY</i>	<i>\$ 5.10</i> <i>1CY</i>	<i>\$ 5,100.00</i>
	(Unit price per linear foot written in words)			(In numerals)	(In numerals)
12	2,800	CY	Import Fill		
	<i>Twelve and 1/2</i>	<i>100</i>	<i>1CY</i>	<i>\$ 12.17</i> <i>1CY</i>	<i>\$ 34,076.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
13	5,800	CY	Export Unsuitable, Offsite Disposal by Contractor		
	<i>Six and 3/4</i>	<i>100</i>	<i>1CY</i>	<i>\$ 6.97</i> <i>1CY</i>	<i>\$ 40,426.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
14	1	EA	Tap and Valve Sleeve		
	<i>Three thousand four hundred twenty</i>	<i>1ea</i>	<i>1ea</i>	<i>\$ 3,470.00</i> <i>1EA</i>	<i>\$ 3,470.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
15	400	LF	8" Water Pipe		
	<i>Forty and 3/4</i>	<i>100</i>	<i>1LF</i>	<i>\$ 40.30</i> <i>1LF</i>	<i>\$ 16,120.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
16	2	EA	8" M.J Gate Valve		
	<i>One thousand four hundred</i>	<i>2ea</i>	<i>2ea</i>	<i>\$ 1,404.00</i> <i>1EA</i>	<i>\$ 2,808.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
17	1	LS	8" M.J Fittings		
	<i>One thousand nine hundred forty three</i>	<i>1LS</i>	<i>1LS</i>	<i>\$ 1,943.00</i> <i>1LS</i>	<i>\$ 1,943.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)

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00300-4

Line No.	Estimated Quantity	Unit	Description of Bid Item	Unit Price Bid	Item Total
18	1	EA	Fire Hydrant		
			<i>Three thousand seven hundred one and 3/100</i> / EA (Unit price per each written in words)	\$ 3,701.00 / EA (In numerals)	\$ 3,701.00 (In numerals)
19	40	LF	10" HDPE Pipe		
			<i>Thirty one and 20/100</i> / LF (Unit price per each written in words)	\$ 31.20 / LF (In numerals)	\$ 1,248.00 (In numerals)
20	410	LF	14" x 23" Elliptical RCP		
			<i>Ninety two and 56/100</i> / LF (Unit price per each written in words)	\$ 92.56 / LF (In numerals)	\$ 37,949.60 (In numerals)
21	4	EA	14" x 23" Elliptical RCP FES		
			<i>One thousand one hundred and twenty three</i> / EA (Unit price per each written in words) <i>and 25/100</i> EA	\$ 1,123.25 / EA (In numerals)	\$ 4,493.00 (In numerals)
22	2	EA	Concrete End Wall		
			<i>One thousand forty and 3/100</i> / EA (Unit price per each written in words)	\$ 1,040.00 / EA (In numerals)	\$ 2,080.00 (In numerals)
23	509	SY	3" HMAc		
			<i>Thirteen and 7/100</i> / SY (Unit price per each written in words)	\$ 13.70 / SY (In numerals)	\$ 6,973.30 (In numerals)
24	552	SY	6" Class 7 Base Course		
			<i>Seven and 20/100</i> / SY (Unit price per each written in words)	\$ 7.20 / SY (In numerals)	\$ 3,974.40 (In numerals)
25	2,303	SY	4" HMAc		
			<i>Eighteen and 31/100</i> / SY (Unit price per each written in words)	\$ 18.31 / SY (In numerals)	\$ 42,167.93 (In numerals)
26	2,504	SY	8" Class 7 Base Course		
			<i>Nine and 32/100</i> / SY (Unit price per each written in words)	\$ 9.32 / SY (In numerals)	\$ 23,337.28 (In numerals)

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Line No.	Estimated Quantity	Unit	Description of Bid Item	Unit Price Bid	Item Total
27	5	EA	Wheel Stops		
	<i>Sixty two and 40/100</i>	<i>EA</i>		<i>\$ 62.40</i>	<i>\$ 312.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
28	93	LF	Parking Striping (Stop Bar)		
	<i>Three and 36/100</i>	<i>LF</i>		<i>\$ 3.36</i>	<i>\$ 312.48</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
29	1	EA	Pavement Marking		
	<i>One hundred fifty six and 54/100</i>	<i>EA</i>		<i>\$ 156.00</i>	<i>\$ 156.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
30	750	CY	Place Topsoil		
	<i>Sixteen and 64/100</i>	<i>CY</i>		<i>\$ 16.64</i>	<i>\$ 12,480.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
31	4,700	SY	Bermuda Grass Seed and Straw		
	<i>zero and 36/100</i>	<i>SY</i>		<i>\$ 0.36</i>	<i>\$ 1,692.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
32	1,750	SY	Bermuda Grass Sod		
	<i>Two and 98/100</i>	<i>SY</i>		<i>\$ 2.98</i>	<i>\$ 5,215.00</i>
	(Unit price per each written in words)			(In numerals)	(In numerals)
TOTAL BID AMOUNT				<i>\$ 282,688.45</i>	

Total Price Written in Words

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Bentonville, Arkansas
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00300-6

The Bidder shall state the price bid in words and numerals (written in ink or typed) for each pay item, and the total bid. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

Bidder understands that OWNER reserves the right to award the total project, or to reject any or all bids and to waive any formalities in the bidding.

Bidder agrees that this Bid shall be good and will not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for the receipt of bids.

Respectfully submitted by,

Firm Name: DON PETERS CONSTRUCTION, INC.

Address: 550 EAST LOWELL AVENUE

City, State, Zip: CAVE SPRINGS, AR. 72718

Signed By: 

Printed Name: STEVE WILLIAMSON

Title: SALES MANAGER / SEC. TREAS.

Arkansas State Contractor's License Number 0069930414

550 E. Lowell Ave.

Cave Springs, AR

72718

End of Document 00300

Incorporated in the State of Arkansas



BUDGET ADJUSTMENT REQUEST FORM

Budget Adjustment #
(Assigned by Admin)

Department: Accounting/Purchasing

Date of Request: July 21, 2014

Acct Number	Account Name	Revenue + (-)	Expense + (-)	Fund Balance + (-)
10-1650-465.73-90	Capital other than building			\$ -
	Income from Developer (Agreement)	\$ 308,908.45		\$ 308,908.45
	Expense for Construction		\$ 308,908.45	\$ (308,908.45)
	Income from State Grant	\$ 247,126.76		\$ 247,126.76
	Expense to reimburse Developer		\$ 247,126.76	\$ (247,126.76)
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -
	Totals	\$ 556,035.21	\$ 556,035.21	\$ -

Justification:

The Arkansas Department of Aeronautics has approved a grant for the public improvements associated with a new T hangar on the west side of Bentonville Municipal Airport. The grant is a reimbursement grant and requires the City to pay the Contractor and receive reimbursement at the end of the project.

FOR ACTING USE ONLY

Council Action: Approved Disapproved Other _____

Date: Date entered: By: _____

Revised 6/1/07

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712
"www.bentonvillear.com"

PLEASE RECYCLE





CHECK ALL THAT APPLY		
Bid Award	Bid #	
Budget Adjustment		
Change Order		
Informational		
Ordinance		
X Resolution		
Other		

AGENDA FORM

CITY COUNCIL MEETING OF:

July 22, 2014

Submitted by: Ben Peters

Department: Engineering

Phone: 479-271-5993

ACTION REQUIRED:

Approval for Mayor and City Clerk to enter into a Ground Lease with Cornerstone Aviation, LLC for a 7 bay T hangar on the west side of Bentonville Municipal Airport.

COST TO CITY:

Cost of this Request:

Additional Budget Amount

☒ One time amount

☐ Continuing O and M

Previously Budgeted	\$ -
Funds Expended to Date	-
Remaining Budget	-
Budget Adjustment	
Remaining After Adjustment	\$ -

Department Head:  Date: 7/21/14

Staff Attorney: Date:

Purchasing Agent: Date:

Mayor: Date:

Finance Director: Date:

This form must be turned into the Mayor's office 7 days prior to the scheduled City Council meeting.

117 WEST CENTRAL AVENUE * BENTONVILLE, AR 72712

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PLEASE RECYCLE





Memorandum

To: Mayor Bob McCaslin, City Council
CC: Travis Matlock, Engineering Director
From: Ben Peters, City Engineer
Date: 7/22/2014
Re: West Side Hangar Project

Cornerstone Aviation, LLC has expressed an interest in constructing an airport hangar building on the west side of the Bentonville Municipal Airport. The proposed hangar is a 7 bay, T hangar of approximately 11,748 square feet. This will be the first hangar constructed along the west taxiway which was completed several years ago.

As part of the development process, it was determined that additional improvements are required to make a hangar building viable. Examples of those improvements are asphalt aprons, driveway, parking lot, utility extensions and stormwater improvements.

The project as a whole has been designed by CEI Engineering Incorporated. The design contract with CEI was approved at the March 11, 2014 Council meeting at a cost of \$26,220.00. The public portions of the project were separated from the building improvements and were bid by City staff. The low bidder is Don Peters Construction (no relation to City Engineer, Ben Peters) of Cave Springs, AR. The bid is \$282,688.45. The total cost for design and construction related to public improvements is therefore \$308,908.45.

A grant application was submitted by City staff to the Arkansas Department of Aeronautics. The 80/20 grant was considered by the Commission at its regularly scheduled meeting on May 14, 2014. The Commission voted unanimously to award the grant to the City at a value of \$247,127 (80% of \$308,908.45).

The developer has agreed to fund the 20% matching share of the grant plus the construction and design costs for the building.

After the grant award notification, it was discovered that the Airport Advisory Board Bylaws prohibit any member of the Board from entering into a contract with the City of Bentonville.

July 22, 2014

Brian Baldwin was the Chairman of the Airport Advisory Board and is also a partner in Cornerstone Aviation LLC. As soon as staff became aware of the conflict, the items were withheld from the Council Agenda and advice was requested from legal staff. Upon review of the above information, state law and ethics codes by legal it has been determined that if Mr. Baldwin stepped down from the Airport Advisory Board that the hangar construction and all of its agreements would not violate ethics or laws.

Mr. Baldwin resigned his position on the Airport Advisory Board effective July 18, 2014.

Staff has reviewed the agreements and contracts and believes that it is in the best interest of the Bentonville Municipal Airport to go forward with the project and agreements and contracts.

There are three agenda items:

A Developers Agreement – The developer agrees to pay the match portion of the grant and front the 80% grant portion in exchange for a reimbursement by the City of the exact dollar amount received from the grant.

A Construction Contract with Don Peters Construction – the contract amount is \$282,688.45 for the public improvements associated with the hangar project.

A Ground Lease Agreement with Cornerstone Aviation LLC – a 35 year lease for the building footprint at \$0.20 per square foot adjusted annually by the Consumer Price Index.

The above agreements are consistent with past hangar projects at Bentonville Municipal Airport and should spur the development of the SW “I” street frontage. Staff recommends approval of all three agenda items.

BENTONVILLE MUNICIPAL AIRPORT
LAND LEASE AGREEMENT

THIS LEASE AGREEMENT entered into this _____ day of _____, between the City of Bentonville, hereinafter referred to as "Lessor," and Cornerstone Aviation, LLC, hereinafter jointly referred to as "Lessee."

WHEREAS, the Lessor does intend to lease certain real property consisting of approximately 11,748 square feet marked and identified as 2501 SW "I" Street and being described as follows:

A Tract of land being a portion of Lot 1 of Thaden Addition as recorded in Plat Book 2010, Page 188 of the Official Public records of Benton County, and being a part of the NW 1/4 of the Fractional SW 1/4, Section 6, Township 19 North, Range 30 W, Fifth Principal Meridian, City of Bentonville, Benton County, Arkansas, and being described by metes and bounds as follows:

COMMENCING at a 5/8 inch rebar capped "LS 1304" for the Northwest corner of Lot 1 of Thaden Addition according to Plat Book 2010, Page 188 of the Official Public records of Benton County, Thence along the East Right-of-Way of Southwest I Street and the Westerly boundary of said Lot 1 the following (6) courses:

- 1.) S 02° 08' 39" W, a distance of 442.52 feet to a found 5/8" rebar capped "LS 1304";
 - 2.) S 02° 04' 27" W, a distance of 99.37 feet to a found 5/8" rebar capped "LS 1304";
 - 3.) S 00° 04' 59" W, a distance of 364.10 feet to a found 5/8" rebar capped "LS 1304";
 - 4.) S 02° 28' 26" W, a distance of 120.30 feet to a found 5/8" rebar capped "LS 1304";
 - 5.) S 27° 29' 55" W, a distance of 27.51 feet to a found 5/8" rebar capped "LS 1304";
 - 6.) S 02° 04' 27" W, a distance of 339.72 feet to a found 5/8" rebar capped "LS 1304";
- Thence leaving said Right-of-Way, S 87° 35' 36" E, a distance of 71.55 feet to the proposed Northwest Corner of the lease area described herein, also being the Northwest corner of proposed Baldwin Hangar for the POINT OF BEGINNING;
- Thence along the footprint of said hangar the following (4) four courses:
- 1.) N 02° 24' 24" E a distance of 60.25 feet;
 - 2.) S 87° 35' 36" E a distance of 195.25 feet;
 - 3.) S 02° 24' 24" W a distance of 60.25 feet;
 - 4.) N 87° 35' 36" W a distance of 195.25 feet to the POINT of BEGINNING, containing 11,763.81 Square Feet or 0.27 Acres, more or less.

NOW, THEREFORE, the Parties hereto agree as follows:

LEASEHOLD. The Lessor does hereby grant, demise and lease unto Lessee certain premises situated in Benton County, Arkansas, within the boundaries of the Bentonville Municipal Airport, said property being described more particularly as the "footprint" under Building at 2501 SW "I" Street as set out in the attached Exhibit A. A "footprint" is defined as the real property located underneath the building which Lessee proposes to erect or has erected.

TERMS AND CONDITIONS. Lessee agrees to comply with and abide by all terms and conditions set forth in this original Agreement of Lease.

- **TERM** - This lease's initial term is for thirty five (35) years beginning on the _____ day of _____, and ending at Midnight, _____, unless sooner terminated as herein provided. Lessee shall also have three (3) consecutive five (5) year options to renew and extend the Lease. Lessee shall provide Lessor with written notice of Lessee's intent to exercise said option(s) at least six (6) months prior to the expiration of the initial thirty-five (35) year term and each subsequent option period.

LEASE PAYMENT - Lessee shall pay to the City of Bentonville the annual rental based on the square foot of total leased ground space. The rate charged per foot shall be \$ 0.20 per square foot. Leased ground space totals 11,748 square feet. Said rental is to be paid in advance in yearly installments on the 1st business day of each year. If the initial

calendar year of the lease is less than 12 months the Lessee will pay a pro-rata payment to cover the first partial year at the time of signing this lease. For each subsequent year during the initial term or any renewal Lease Term, the rent shall be increased annually in accordance with changes in the Consumer Price Index (CPI), provided, however, that no single annual increase shall exceed two percent (2%). The Consumer Price Index refers to the Consumer Price Index for all urban consumers (CPI-U), U.S. City Average All Items Index. The parties shall use the current standard CPI-U reference base as published by the Bureau of Labor Statistics using September as the comparison month. Rent for the second year of the Term shall be determined using the CPI-U for September 2014 as compared to September 2013. Similarly, rent for each successive year of the Term shall be determined using the CPI-U for the most recent September as compared to the preceding September.

- **TAXES** - Lessee shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term. Lessee shall have the right to contest by appropriate proceedings the amount or validity of any tax or assessment which Lessee is obligated to pay in accordance with the provisions hereof.
- **ASSIGNMENTS & SUB-LEASES**
This agreement, in whole or any part thereof may not be assigned or transferred by Lessee unless such action receives prior approval by the Airport Advisory Board and the Lessor, which such approval can not be unreasonably withheld. Such assignment releases the original Lessee of its obligations and the new Lessee assumes all obligations of this original agreement in full.

INSURANCE - Lessee shall obtain & maintain property insurance coverage for the repair or replacement of the leasehold and any adjacent improvements. The City of Bentonville will be listed as an additional insured on the policy. The Lessee will provide proof of this insurance upon request and keep the policy in effect during the terms of the lease. Lessee acknowledges that it is the Lessee's sole responsibility to maintain insurance on any personal property if desired.

USE OF THE PREMISES. The development and/or use of any Premises located within the current or future boundaries of the Bentonville Municipal Airport shall be consistent with the most recent Airport Master Plan and Airport Minimum Standards. Lessee agrees that all uses of the premises must be approved by the Airport Advisory Board and shall be predominantly for aviation use. All future structure additions shall be subject to prior approval by Lessor. The structure(s) constructed by Lessee under this Agreement shall be the property of Lessee until the expiration or termination of this lease, at which time it converts to the City of Bentonville. In the event that Lessee uses the property for purposes other than the purposes stated above, then Lessee shall be deemed to be in default of this agreement

UTILITIES. Lessee shall be responsible for utilities to the leasehold. Initial utility service to the leased property will be the responsibility of the lessee and negotiations for terms of utility provision are a matter between the lessee and each individual service provider including the City. In no case will City Utilities service be denied to an approved installation. Lessee shall pay all initial tie-in costs and all monthly ongoing fees for such utilities. Utilities required by the Lessee that are not owned/managed by the City must be coordinated by the Lessee and utility supplier directly.

REPAIRS, MAINTENANCE AND APPEARANCE.

(a) Lessee shall at all times during the term of this Lease Agreement, at Lessee's expense, keep and maintain in good repair and safe condition the leased premises and its equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterment's. Lessee will at all times keep the leasehold free and clean of all trash, refuse and any unsightly conditions or fire hazards.

(b) The necessity for and adequacy of repairs to the leased premises, pursuant to subparagraph (a) hereof, shall be measured by the standard which is appropriate for improvements of similar construction and also shall meet the requirements and standards set out and promulgated by the City of Bentonville through its Airport Advisory Board or other governmental agency or entity pursuant to the primary lease referred to above.

(c) Lessee agrees to reimburse Lessor for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the governing authority mentioned in subparagraph (b) above as a result of failure by Lessee to maintain or repair the demised premises as required.

ALTERATIONS AND IMPROVEMENTS. Lessee shall be entitled to make alterations, additions and improvements to the property necessary and desirable for the operation of the premises. Lessee shall not be entitled to make any significant or material alterations, additions or changes to the exterior of the leased premises without Lessor's prior written consent. Lessee acknowledges and agrees that all such alterations, additions and improvements, shall become the property of the City of Bentonville, Arkansas, upon the termination of the lease agreement.

WAIVER. The waiving of any one or more breaches of the terms or provisions contained herein by the Lessor or Bentonville Airport Advisory Board shall not be deemed a waiver of any other breaches of the terms of provisions.

TIME OF THE ESSENCE. It is understood that time is of the essence of this Lease Agreement.

DEFAULT. In the event the Lessee defaults under the terms of the agreement, this lease may be terminated by the Bentonville City Council at a regular meeting pursuant to the following:

(a) Lessor shall give written notice by certified mail, return receipt requested, of default simultaneously to Lessee as well as any assignee, any mortgagee or beneficiary of Lessee's leasehold interest in the leased premises and improvements thereon who are known to the Lessor.

(b) No default shall be deemed to exist unless Lessee fails to cure said default within thirty (30) days after receipt of written notice thereof, provided, however, that if Lessee fails to cure same within said thirty (30) days, the mortgagee or beneficiary of Lessee's said leasehold interest shall have an additional twenty (20) days after the end of said thirty (30) days period within which to cure same. As to any curing of a default (other than payment of rent) which would reasonably require a greater period of time for curing than is provided for above, if the lessee shall, within the time stipulated, commence such curing and diligently pursue same, then, the above time period shall be extended to allow Lessee reasonable opportunity to do so.

(c) Lessee shall have the right to contest, in good faith, the existence of any default alleged to have occurred or alleged to exist, and in the event Lessee so elects, the time period for curing any such alleged default shall be extended until thirty (30) days after a final judgment has been entered in a court having jurisdiction over such contest.

(d) Following the period for curing or contesting a default provided above, the City Council may give written notice by certified mail, return receipt requested, of Lessor's exercise of its right to declare this lease forfeited, terminated, null and void. Upon such notice, Lessee agrees to vacate the premises immediately and to forfeit any and all claims, rights, and property interest in this lease agreement or the improvements mentioned herein. Should it become necessary for Lessor to resort to judicial process to enforce the terms of this agreement, or reclaim possession of the premises, Lessee agrees to pay a reasonable attorney's fee.

TERMINATION OF USE. In the event that the Bentonville Airport facility and property are no longer used for aviation purposes, the City of Bentonville or its assign shall purchase the remaining leasehold interest from Lessee at fair market value.

MORTGAGING OF LEASEHOLD. Lessee is hereby given the absolute right without the Lessor's consent to mortgage its interest in the leased premises, provided that no such mortgage shall extend to or affect the fee, the reversionary interest, or the estate of Lessor in and to the land and building (hangar facility complex) erected thereon.

GOVERNMENTAL REQUIREMENTS GENERALLY. Lessee shall comply with all governmental requirements applicable to Lessee's use and operation of the leased premises.

INDEMNITY. Lessor shall not be liable for any personal injury to the Lessee or to its officers, agents, employees, invitees, licensees or to any other occupant of any part of the leased premises, or for any damage to any property of

Lessee or of any other occupant of any part of the leased premises, irrespective of how such injury or damage may be caused, whether from action of the elements or occupants of adjacent properties. In the event an action, claim or suit is commenced against Lessor as a result of any such personal injury or damage occurring on the leased premises, Lessee agrees to hold Lessor harmless from any liability or responsibility therefor, including attorney's fees or costs of the action.

QUIET ENJOYMENT. If Lessee pays the rents and other amounts herein provided, observes and performs all the covenants, terms and conditions, Lessee shall peaceably and quietly hold and enjoy the premises for the lease term without interruption by Lessor or any other persons claiming by, through or under Lessor, subject, nevertheless, to the terms and conditions of this Lease.

GRAMMATICAL USAGE. Whenever used herein: The singular number shall include the plural, the plural the singular, and any gender all genders in any place in which the context so requires.

LESSOR:

CITY OF BENTONVILLE,
MAYOR Bob McCaslin

Attest: _____
CITY CLERK Linda Spence

LESSEE:

Owner/Company Name

By: _____
Printed Name: _____
Title: _____

APPROVED:
BENTONVILLE AIRPORT ADVISORY BOARD

By: _____
Chairman,

ACKNOWLEDGMENT

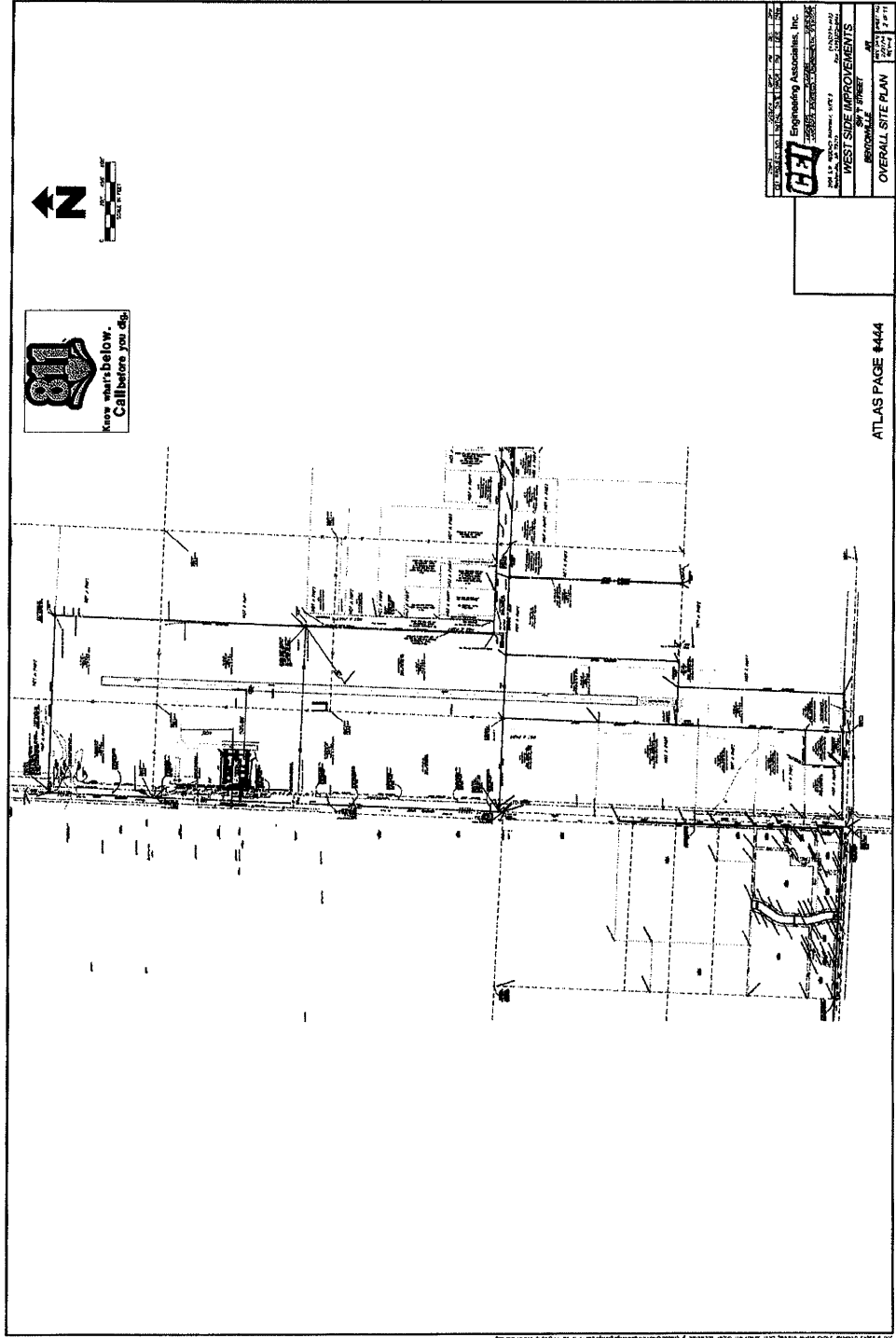
State of Arkansas)
) ss.
County of Benton)

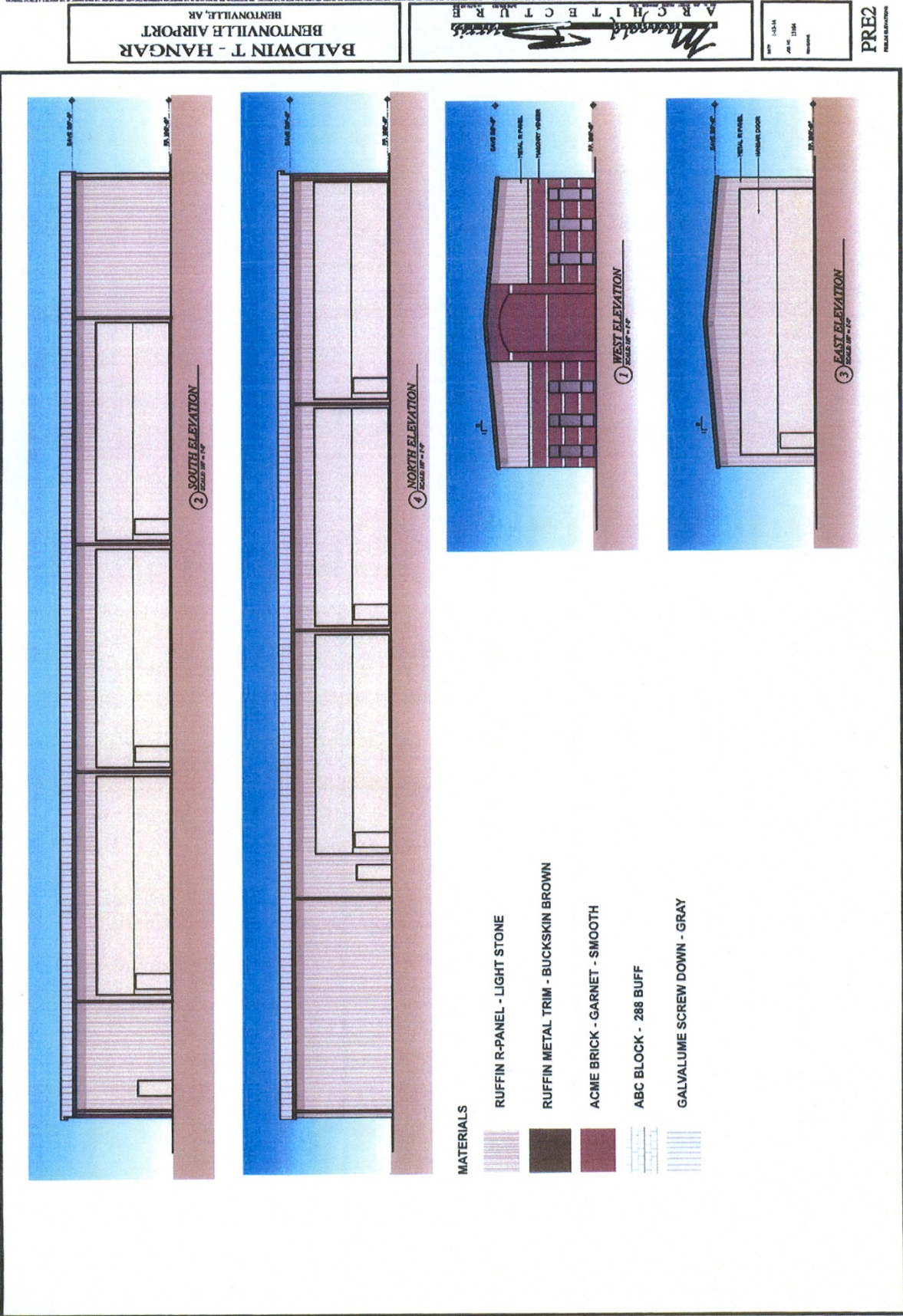
On this day before me, a Notary Public, duly commissioned, qualified and acting within and for the County and State aforesaid, personally appeared the within named _____, to me well known, who acknowledged himself to be the _____ of _____, the Lessee in the above and foregoing Lease Agreement, and that he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2013.

Notary Public

My Commission Expires:





RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A LAND LEASE AGREEMENT WITH CORNERSTONE AVIATION, LLC FOR A HANGAR SITE LOCATED AT THE BENTONVILLE MUNICIPAL AIRPORT.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1: That the Mayor and City Clerk be and are hereby authorized to enter into a Land Lease Agreement with Cornerstone Aviation, LLC for an 11,748 square foot hangar located at the Bentonville Municipal Airport.

Section 2: This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this _____ day of _____, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK